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# Security Council

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## Letter dated 16 March 2001 from the President of the Governing Council of the United Nations Compensation Commission addressed to the President of the Security Council

The Governing Council of the United Nations Compensation Commission commenced its thirty-ninth session at Geneva on 13 March 2001. The session, which was scheduled to conclude on 15 March 2001, was adjourned on that date until 2 April 2001. Delegations from Kuwait, Iraq, Sri Lanka, Lebanon and Jordan addressed the Council during its opening plenary meeting. The statements of the delegations will be sent with the original of this letter.

During the session the Council considered seven reports and recommendations made by the Panels of Commissioners, in the E2, E3, E4, F3 and E/F categories of claims. The report on category E2 claims (annex I) concerns the review of claims filed on behalf of corporations and other business entities not incorporated in Kuwait. The reports on category E3 claims (annexes III and V) concern the review of non-Kuwaiti construction and engineering claims; the reports on E4 claims (annexes VII and IX) concern the review of Kuwaiti private sector claims; and the report on F3 claims (annex XIII) concerns the review of governmental claims submitted by the Government of Kuwait. The report on E/F claims (annex XI) is the first report of that Panel of Commissioners dealing with export credit guarantee claims and insurance claims. The attached tables provide details of the amounts of compensation claimed in the reports and the amounts awarded by the Governing Council.

The Governing Council considered the report of the Executive Secretary: summary of activities, covering the period from 1 November 2000 to 31 January 2001. The report covers the processing of claims, requests for correction under article 41 of the Provisional Rules for Claims Procedure, the withdrawal of claims and the payment of approved claims.

The Council discussed several issues relating to the processing and payment of claims, including the thirteenth report of the Executive Secretary pursuant to article 41 of the Provisional Rules for Claims Procedure (annex XVI), and adopted the accompanying decision approving corrections to certain category A and C claims (annex XVII).

The Council finalized its consideration of the issue of business loss claims filed by individuals in categories C and D that relate to losses sustained by Kuwaiti companies, and adopted decision 123 (annex XV) to address this issue. Pursuant to that decision, which was reached after extensive discussions in the Council, and after ascertaining the views of Kuwait and Jordan as the most concerned Governments, such claims will be treated as Kuwaiti corporate claims and reviewed by the E4 Panels of Commissioners. The decision also provides that the Commission will pay awards to claimants on the basis of determinations of entitlements made by bilateral committees, to be established, comprising a representative of Kuwait and of the respective Government of the non-Kuwaiti claimant. Annexed to decision 123 are the guidelines for the work of those bilateral committees and Kuwait's delegation of authority to pay compensation to the non-Kuwaiti claimants based on the determinations of such bilateral committees.

The Council heard a presentation from the secretariat concerning the availability of claimant information, via the Internet, to Governments that have filed claims with the Commission. The Council requested the secretariat to prepare an information note on the issue.

The Council considered and took note of the report of the Executive Secretary on the distribution of payments and transparency, and the return of undistributed funds, and requested the secretariat to continue to inform the Council of the reports of Governments and international organizations on the distribution of payments and the return of undistributed funds. The Council also considered issues raised by delegations regarding the reporting requirements contained in decisions 18 and 48, and requested the secretariat to prepare an information note clarifying those issues for the Council's further consideration.

The Council considered requests made by the non-member States Sri Lanka and Lebanon at the opening plenary meeting of the session. The delegation of Sri Lanka addressed the Council concerning additional evidence the Government wished to file in support of approximately 4,000 individual claims, and the delegation of Lebanon requested the Council to accept for filing a number of individual claims of Lebanese citizens who were previously unable to file. The Council requested the secretariat to prepare information notes on the issues raised by those delegations for the Council's further consideration.

Pursuant to Governing Council decision 114, made at the thirty-eighth session, the Council continued its consideration of the provision of technical assistance to Iraq. Owing to the complexity of the discussions, the differing views of delegations, and the Council's stated desire to achieve a consensus decision if possible, further consideration of this issue was adjourned until 2 April 2001. The Council will reconvene on that date to continue its consideration of this item.

Finally, the Governing Council decided to hold its fortieth session from 19 to 21 June 2001.

(*Signed*) Sverre Bergh **Johansen**
President of the Governing Council

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# Report and recommendations made by the Panel of Commissioners concerning the sixth instalment of E2 claims*

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* Previously issued as document S/AC.26/2001/1.

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| 9 | Propositions and conclusions on compensation for business losses: Types of damages and their valuation | S/AC.26/1992/9 |
| 10 | Provisional rules for claims procedure | S/AC.26/1992/10 |
| 13 | Further measures to avoid multiple recovery of compensation by claimants | S/AC.26/1992/13 |
| 15 | Compensation for business losses resulting from Iraq's unlawful invasion and occupation of Kuwait where the trade embargo and related measures were also a cause | S/AC.26/1992/15 |
| 16 | Awards of interest | S/AC.26/1992/16 |
| 46 | Decision concerning explanatory statements by claimants in categories "D", "E" and "F" | S/AC.26/Dec.46 (1998) |

Table 2. List of Panel reports and recommendations referred to in the present report

| Short name | Title | Document No. |
|---|---|---|
| E1(3) report | Report and recommendations made by the Panel of Commissioners concerning the third instalment of "E1" claims | S/AC.26/1999/13 |
| E2(1) report | Report and recommendations made by the Panel of Commissioners concerning the first instalment of "E2" claims | S/AC.26/1998/7 |
| E2(2) report | Report and recommendations made by the Panel of Commissioners concerning the second instalment of "E2" claims. | S/AC.26/1999/6 |
| E2(3) report | Report and recommendations made by the Panel of Commissioners concerning the third instalment of "E2" claims | S/AC.26/1999/22 |
| E2(4) report | Report and recommendations made by the Panel of Commissioners concerning the fourth instalment of "E2" claims | S/AC.26/2000/2 |
| E2(5) report | Report and recommendations made by the Panel of Commissioners concerning the fifth instalment of "E2" claims | S/AC.26/2000/17 |
| E3(1) report | Report and recommendations made by the Panel of Commissioners concerning the first instalment of "E3" claims | S/AC.26/1998/13 |
| E3(3) report | Report and recommendations made by the Panel of Commissioners concerning the third instalment of "E3" claims | S/AC.26/1999/1 |
| F1(1.1) report | Report and recommendations made by the Panel of Commissioners concerning part one of the first instalment of claims by Governments and International Organizations (category "F" claims) | S/AC.26/1997/6 |
| F1(2) report | Report and recommendations made by the Panel of Commissioners concerning the second instalment of "F1" claims | S/AC.26/1998/12 |

## Introduction

1. The Governing Council of the United Nations Compensation Commission (the "Commission"), at its thirtieth session in December 1998, appointed the present Panel of Commissioners, composed of Messrs. Bruno Leurent (Chairman), Kaj Hober and Andrey Khoudorojkov (the "Panel" or "E2A Panel"), to review category "E2" claims (the "E2 claims"). 1/ This report contains the Panel's recommendations to the Governing Council, pursuant to article 38(e) of the "Provisional Rules for Claims Procedure" (the "Rules"), concerning the sixth instalment of "E2" claims. 2/

2. This instalment consists of 99 claims submitted by corporations primarily operating in the manufacturing and import/export sectors (the "claims"). 3/ The claims were selected by the secretariat of the Commission (the "secretariat") from the "E2" claims on the basis of criteria that include (a) the date of filing with the Commission, (b) the claimant's type of business activity, and (c) the type of loss claimed. The procedure used by the Panel in processing the claims is described in section I below.

3. The claimants are non-Kuwaiti companies which were engaged in manufacturing and trading activities at the time of Iraq's invasion and occupation of Kuwait on 2 August 1990. The claims have been filed by companies from 27 countries, and involve a total claimed amount of USD 334,401,955. 4/

4. The types of claims in this instalment are similar to the claims addressed by this Panel in the E2(4) report. The claimants allege that they sustained losses in connection with contracts and commercial dealings that were entered into prior to 2 August 1990. The alleged losses include those arising out of the non-payment for goods shipped or services provided to parties in Iraq and Kuwait, goods lost or destroyed in transit to destinations in the Middle East, and goods sold at a loss after the failure of the originally intended delivery. In addition, claimants allege that the continued manufacture of goods was interrupted after 2 August 1990 due to Iraq's invasion and occupation of Kuwait. These claimants typically seek compensation for costs incurred before the contract was interrupted plus the profits that they expected to earn on the contract.

5. Claimants also allege that their business operations in the Middle East region sustained losses during the period of Iraq's invasion and occupation of Kuwait and for some time thereafter. Such losses include loss of profits from a decline in business or course of dealing, increased

costs of operations (including salary and termination payments), evacuation costs and tangible property losses. The various types of losses, as described by the claimants, are set out in greater detail in section III below.

6. Three tasks have been entrusted to the Panel by the Governing Council. 5/ First, the Panel must determine whether the various types of losses alleged by the claimants are, in principle, compensable, and, if so, the appropriate criteria for the measure of compensation. Second, the Panel must verify whether the losses which are in principle compensable have in fact been incurred by a given claimant. Third, the Panel must value those losses found to be compensable and make recommendations with respect to an award thereon. The implementation of these steps with regard to the present instalment is described in sections II to IV, followed by the Panel's recommendations in section V.

## I. PROCEDURAL HISTORY

7. Pursuant to article 16 of the Rules, the Executive Secretary of the Commission reported the significant legal and factual issues raised by the claims in his twenty-eighth report, dated 23 July 1999. Pursuant to paragraph 3 of article 16, a number of Governments, including the Government of the Republic of Iraq ("Iraq"), submitted their information and views on the Executive Secretary's report. These responses were considered by the Panel in the course of its deliberations.

8. The secretariat made a preliminary assessment of the claims in order to determine whether each claim met the formal requirements established by the Governing Council in article 14 of the Rules. As provided by article 15 of the Rules, deficiencies identified were communicated to the claimants in order to give them the opportunity to remedy those deficiencies.

9. Given the large number of claims under review, the volume of supporting documentation submitted with the claims and the complexity of the verification and valuation issues, the Panel requested expert advice pursuant to article 36 of the Rules. This advice was provided by accounting and loss adjusting consultants (the "expert consultants") retained to assist the Panel.

10. A preliminary review of the claims was undertaken by the secretariat and the expert consultants in order to identify any additional information and documentation that might be required to assist the Panel in properly verifying and valuing the claims. Pursuant to article 34 of the Rules, notifications were dispatched to the claimants ("article 34 notifications"), in which claimants were asked to respond to a series of

mostly standard questions concerning the claims and to provide additional documentation.

11. At its first meeting on 24 November 1999, the Panel classified the claims as "unusually large or complex" within the meaning of article 38(d) of the Rules, in view of the variety and complexity of the issues raised, and the volume of documentation submitted with the claims.

12. In a procedural order dated 24 November 1999, the Panel instructed the secretariat to transmit to the Government of Iraq the documents filed by the claimants for claims based on contracts with Iraqi parties and financed by a letter of credit issued by an Iraqi bank. Iraq was invited to submit its comments on such documentation and to respond to questions posed by the Panel by 29 May 2000. Iraq's comments and responses were submitted in a timely manner.

13. In reviewing each claim, the Panel took into consideration information and documents provided by the claimants in response to the article 34 notifications as well as Iraq's comments and documents filed in response to the questions raised in the Panel's procedural order of 24 November 1999 and comments by governments in response to the Executive Secretary's article 16 report. The Panel also considered claim-specific reports prepared on the basis of the above information by the expert consultants under the Panel's supervision and guidance.

14. In reviewing the claims, the Panel has taken measures to ensure that compensation has not been recommended more than once for the same loss. To that end, the Panel has, among other things, requested the secretariat to ascertain whether other claims have been submitted to the Commission with respect to the same projects, transactions or property as the claims under review.

15. In keeping with Governing Council decision 13, where a loss has been found to be compensable in this instalment and the same loss has been previously compensated in another claim, the amount of compensation awarded in the other claim has been deducted. Where a claim has been found to be compensable in this instalment and another claim with the same loss is pending before a different Panel, the relevant information has been provided to the other Panel. In certain circumstances, where the Panel considered that a transfer would facilitate a consistent determination, the claim in this instalment has been transferred to another Panel before which the related claim is pending.

## II. LEGAL FRAMEWORK

### A. Applicable law

16. The law to be applied by the Panel is set out in article 31 of the Rules, which provides as follows:

> "In considering the claims, Commissioners will apply Security Council resolution 687 (1991) and other relevant Security Council resolutions, the criteria established by the Governing Council for particular categories of claims, and any pertinent decisions of the Governing Council. In addition, where necessary, Commissioners shall apply other relevant rules of international law."

17. In Security Council resolution 687, paragraph 16 provides:

> "[The Security Council] [r]eaffirms that Iraq, without prejudice to the debts and obligations of Iraq arising prior to 2 August 1990, which will be addressed through the normal mechanisms, is liable under international law for any direct loss, damage, including environmental damage and the depletion of natural resources, or injury to foreign Governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait." 6/

18. A fundamental jurisdictional requirement under the above provision for claims before the Commission is that the loss or damage not constitute debts or obligations of Iraq arising prior to 2 August 1990. The interpretation of this requirement as it relates to the claims and types of losses in this instalment is addressed in section III below.

19. Another fundamental requirement for claims before the Commission is that the loss or damage be a direct result of Iraq's invasion and occupation of Kuwait.

20. Paragraph 21 of Governing Council decision 7 provides guidance on the requirement of directness applicable to category "E" claims, and lists five categories of events and circumstances which meet that requirement. Paragraph 21 of decision 7 provides in relevant part that compensation is available "... with respect to any direct loss, damage, or injury to corporations and other entities as a result of Iraq's unlawful invasion and occupation of Kuwait. This will include any loss suffered as a result of:

> "(a) Military operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991;
>
> "(b) Departure of persons from or their inability to leave Iraq or Kuwait (or a decision not to return) during that period;

> "(c) Actions by officials, employees or agents of the Government of Iraq or its controlled entities during that period in connection with the invasion or occupation;
>
> "(d) The breakdown of civil order in Kuwait or Iraq during that period; or
>
> "(e) Hostage-taking or other illegal detention."

21. Paragraph 21 is not exclusive and leaves open the possibility that there may be causes of "direct loss" other than those enumerated. 7/ The application of the directness requirement to the claims in this instalment is addressed in section III below.

22. The claims before the Commission concern Iraq's liability under Security Council resolution 687 (1991) for any direct loss resulting from Iraq's invasion and occupation of Kuwait. Accordingly, the Panel considers that its role is not to adjudicate contractual disputes between the claimant and an Iraqi, Kuwaiti or other contracting party. General principles of contract law that are found in most municipal law systems will, therefore, only be used as a tool for the purposes of determining the compensability of contract losses, including the measure of compensation to be recommended. 8/

### B. Evidentiary requirements

23. The category "E" claim form that was used by claimants for the filing of the claims advised each claimant to submit "a separate statement explaining its claim ('Statement of Claim'), supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and the amount of the claimed loss". 9/ The claim form also advised each claimant to include in its Statement of Claim the date, type and basis of the Commission's jurisdiction for each element of loss; the facts supporting the claim; the legal basis for each element of the claim; the amount of compensation sought and an explanation of how this amount was arrived at. 10/

24. When evaluating the claims, the Panel must apply the general and specific requirements for the production of evidence established by the Rules and other decisions of the Governing Council.

25. General guidance on the submission of evidence is provided by article 35 of the Rules. Paragraph 1 of article 35 states that "[e]ach claimant is responsible for submitting documents and other evidence which demonstrate satisfactorily that a particular claim or group of claims is eligible for

compensation pursuant to Security Council resolution 687 (1991)". Pursuant to paragraph 3 of article 35, corporate claims "must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and amount of the claimed loss". Thus, the evidence required to justify a recommendation for compensation must address the existence of the alleged loss, the issue of causation and the amount of the alleged loss. The Governing Council has emphasised the mandatory nature of this requirement, stating that "[s]ince these [category "E"] claims may be for substantial amounts, they must be supported by documentary and other appropriate evidence". 11/ The Governing Council has also stated that "... no loss shall be compensated by the Commission solely on the basis of an explanatory statement provided by the claimant." 12/

26. It is for the Panel to decide "the admissibility, relevance, materiality and weight of any documents and other evidence submitted." 13/ The Panel's determination of what constitutes "appropriate evidence sufficient to demonstrate the circumstances and amount" of the loss will depend upon the nature of the loss alleged. A discussion of the specific evidentiary requirements for the types of claims in this instalment is found in section III, below.

### C. Observations of the Panel regarding the presentation of claims

27. Having reviewed the claims in the present instalment pursuant to the procedural and evidentiary standards outlined above, the Panel finds that, while it is for the claimant to provide appropriate evidence sufficient to demonstrate the existence, circumstances and amount of the claimed loss, many claimants have failed, both in their original submissions and in their responses to the article 34 notifications, to discharge this burden. The Panel emphasises that it is not the duty of the Panel but, rather, that of the claimant, to demonstrate that it incurred an actual loss, to substantiate each element of its claim and to establish a direct causal link between the loss and Iraq's invasion and occupation of Kuwait.

28. A number of claimants have also failed to submit English translations of documents upon which the claim was based. Although requested by the secretariat to remedy this deficiency, as required by article 14 of the Rules, these claimants have not done so.

29. Some claimants asserted that they were unable to produce the necessary evidence because of the time that had elapsed since the events in question or because of the loss or destruction of relevant documents. The Panel does not accept the passage of time or the destruction of the claimant's records as adequate reasons to relieve a claimant from its burden to produce sufficient evidence to substantiate its claim. It is

incumbent upon a claimant to preserve all documents that may be relevant to the determination of a claim that is pending before this Commission. An exception can be made when a claimant has established that it is unable to gather the proof required as a direct result of Iraq's invasion and occupation of Kuwait.

## III. REVIEW OF THE CLAIMS PRESENTED

30. In this section, the claims are examined in light of the existing jurisprudence of the Commission. Where required, fresh determinations are made by the Panel. The fact patterns of the majority of claims are similar to those addressed in previous "E2" Panel reports, particularly the E2(4) report. Consequently, where relevant to the present claims, the findings in those reports are summarised. It is only when new issues are raised by the claims under review that the findings of the Panel are more fully explained.

31. For each type of loss present in this instalment, the fact patterns of the claims are described briefly under the heading "claims description", followed by a discussion of the Commission's relevant jurisprudence under the heading "compensability". The principal evidentiary requirements that must be met to establish the compensability of the losses in the claims under consideration as well as the criteria to be used to determine the amount of compensation to be recommended, are addressed under the heading "verification and valuation". The Panel's determinations with respect to each claim are reflected in annex II.

### A. Completed contracts

#### 1. Non-payment for goods delivered or services provided to Iraqi parties

##### (a) Claims description

32. Many claimants in the present instalment seek compensation for contractual amounts owed for goods delivered or services provided to Iraqi parties. In some cases the goods were specially manufactured for the Iraqi buyer. The transactions called for various payment terms, with due dates ranging from 30 days to over three years after the date of shipment.

33. Typically, the claimants seek to recover the original contract price of the goods. In several cases, additional costs associated with performance of the contracts are sought, such as bank charges for letters

of credit, interest payments on loans extended on the basis of the seller's expected receipt of payment, and overdrafts taken out to finance the production of the goods.

### (b) Compensability

#### (i) The jurisdiction of the Commission under the "arising prior to" clause

34. In determining whether it has jurisdiction over these claims, the Panel must apply paragraph 16 of Security Council resolution 687 (1991), which excludes from the jurisdiction of the Commission "the debts and obligations of Iraq arising prior to 2 August 1990" (the "arising prior to" clause). To summarise the Commission's jurisprudence with respect to the interpretation of the "arising prior to" rule, where the performance giving rise to the original debt had been rendered by a claimant more than three months prior to 2 August 1990, a claim based on payment owed for such performance is to be considered as a debt or obligation of Iraq "arising prior to 2 August 1990" and is therefore outside the jurisdiction of the Commission. 14/ This rule applies regardless of whether the contract provides for a deferred payment by the Iraqi purchaser due after 2 August 1990. 15/

35. In the context of claims involving the supply of goods, this Panel concluded in the E2(4) report that for purposes of the "arising prior to" clause the claimant's performance is defined by shipment of the goods and that a claim for non-payment based on a sales contract with an Iraqi party is within the Commission's jurisdiction if shipment of the goods took place on or after 2 May 1990. 16/ However, the Panel has also expressly recognised that a further elaboration of these rules will be necessary in dealing with situations in which delivery was not the sole essential obligation of the claimant. 17/

36. With respect to claims based on the failure of an Iraqi bank to honour a letter of credit that it had issued to finance the purchase of goods, the Panel concludes, as it did in the E2(4) report, that the claimant's presentation on or after 2 May 1990 of the documents, as specified in the letter of credit, to the relevant bank completes the performance by the claimant and delineates the jurisdiction of the Commission for the purposes of the "arising prior to" clause. 18/

37. In order to ensure that Iraq's old debt would not be masked by unusually long or deferred payment terms, the Panel has added the condition that the period between the date of shipment and the date of presentation of documents must not have exceeded 21 days (that being considered the normal period for the presentation of documents after shipment). 19/

Accordingly, claims based on non-payment of letters of credit in connection with shipments that occurred prior to 11 April 1990 are outside the jurisdiction of the Commission under the "arising prior to" rule. 20/

38. In this instalment, some claims are based on promissory notes which had been issued in payment for goods delivered in 1985 and which became due between 1989 and 1994. The Panel notes that other Panels have concluded that where promissory notes were issued in payment for work that was performed prior to 2 May 1990, claims based on the notes constitute debts or obligations of Iraq that arose, within the meaning of Security Council resolution 687 (1991), prior to 2 August 1990, and as such are outside the Commission's jurisdiction. 21/ This conclusion applies in all situations, even where payment under the promissory note was due during the period of Iraq's invasion and occupation of Kuwait. The Panel concurs with these conclusions and applies them to the claims under review.

### (ii) The directness requirement

39. For a claim within the Commission's jurisdiction to be compensable, the Panel must find that the loss in question directly resulted from Iraq's invasion and occupation of Kuwait (the "directness requirement"). The Panel recalls its findings in the E2(4) report with respect to the factual circumstances relating to the causes of the losses alleged. 22/ In particular, these include Iraq's adoption of Act 57 (1990) by which Iraqi state organizations, corporations and citizens were effectively prohibited from making payments to foreign suppliers and which confirmed previous declarations made by Iraqi officials announcing that Iraq had suspended payment of its foreign debt. Also affecting commercial activities in Iraq were the closure of borders between Iraq and neighbouring countries; the danger presented by military operations in the area, including Iraq's mine-laying activities in the Persian Gulf, which severely disrupted transportation; the mass exodus of foreign workers from Iraq; Iraq's relocation of foreigners to military, oil and other strategic sites as "human shields"; and the extensive damage to Iraq's infrastructure as a result of military operations to remove Iraq's presence from Kuwait. The Panel concludes, as it did in the E2(4) report, that the actions of Iraq's officials during Iraq's invasion and occupation of Kuwait, the military operations by Iraq and by the Allied Coalition Forces to liberate Kuwait, and the ensuing breakdown of civil order in Iraq, directly caused the non-performance of contractual obligations of Iraqi purchasers and Iraqi banks in respect of goods delivered or services provided before the invasion within the meaning of paragraph 21 of Governing Council decision 7.

40. In addition, the Panel notes the findings in the E2(4) report to the effect that the trade embargo was not intended to prevent Iraq from paying its debts to foreign suppliers for goods delivered prior to Iraq's invasion and occupation of Kuwait, but was intended to prevent Iraq from receiving new supplies, and that the trade embargo was a reasonable and foreseeable response to that invasion and occupation. The Panel recalls Governing Council decision 9 which provides that compensation may be awarded where Iraq's invasion and occupation of Kuwait constituted a cause of direct loss which is separate and distinct from the trade embargo, notwithstanding the fact that the invasion and occupation and the trade embargo are found to be parallel causes of the loss. 23/

41. On the other hand, consistent with the provisions of Governing Council decision 9, where the evidence shows that an assets freezing order adopted by an individual State was the sole cause of Iraq's non-payment, the claim is not compensable. In the claims under review, such a situation arose where the Iraqi issuing bank had previously authorised the payment of a letter of credit, but the advising bank was unable to implement the transfer of funds due solely to the freezing order. 24/

42. With respect to the claims involving non-payment of amounts that fell due after the liberation of Kuwait, the Panel finds, as it did in the E2(4) report, that the economic consequences of the military operations and the resulting damage to Iraq's infrastructure, as well as the ensuing breakdown of civil order in Iraq, did not necessarily end immediately after the cessation of hostilities on 2 March 1991. 25/ Accordingly, with reference to the claims under review, the Panel concludes that the non-payment of debts by Iraqi parties between 2 March 1991 and 2 August 1991 may be compensable, as such non-payment may still constitute a direct consequence of Iraq's invasion and occupation of Kuwait. However, the non-payment of contractual obligations by Iraqi parties after 2 August 1991 can no longer be deemed to be directly caused by Iraq's invasion and occupation of Kuwait.

43. With regard to compensation sought in respect of costs incurred on loans taken out to finance the production or sale of goods, absent a specific showing that such losses would reasonably have been expected to occur as a result of the non-payment for the goods, the Panel finds that, under the circumstances present in the claims under review, such losses arose from the impact of the non-payment upon the conduct of the claimant's business or its dealings with third parties and that they are too remote to be the direct result of Iraq's invasion and occupation of Kuwait. 26/

### (c) Verification and valuation

44. With regard to claims for non-payment for goods delivered or services provided to Iraqi parties, the nature of proof required to establish that a claim is within the Commission's jurisdiction under the "arising prior to clause," varies depending upon whether the claim is considered on the basis of the sales contract or on the basis of the letter of credit.

45. In the case of a sales contract, satisfactory proof of the claimant's performance for purposes of determining the Commission's jurisdiction includes documentation that proves shipment and the date thereof, such as a bill of lading, airway bill or truck consignment note. With respect to a claim based on a letter of credit, proof of performance consists of evidence of the claimant's timely presentation of the documents required under the letter of credit to the bank with which it directly dealt. 27/

46. The essential facts that must be proven to establish the compensability of a claim for goods shipped to Iraqi parties, found to be within the Commission's jurisdiction, are outlined below.

47. The existence of a contractual relationship, including the payment terms, the price of the goods and the due date for payment must be proven. Where performance consisted of the delivery of goods, as proof of shipment the claimant is required to submit transportation documents, such as a bill of lading or an airway bill, or other reliable contemporaneous documents, such as an acknowledgement of receipt by the buyer.

48. Where a claim is based upon the failure of an Iraqi bank to honour a letter of credit, the claimant is required to produce, in addition to the letter of credit, proof that all documents stipulated by the letter of credit were presented to the relevant bank and that the terms and conditions of the letter of credit were otherwise complied with.

49. Where a claimant has satisfied the evidentiary criteria outlined above, the normal measure of compensation is the contract price for which payment is outstanding plus any reasonable incidental costs directly resulting from the non-payment, such as banking charges for the cancellation of letters of credit that were not honoured.

## 2. Non-payment for goods delivered to Kuwaiti parties

### (a) Claims description

50. There are approximately 10 claims in this instalment based on the alleged non-payment for goods delivered by manufacturing and trading

companies to Kuwaiti purchasers. The payment terms of such sales usually involved cash against the presentation of documents or provided for payment between one and three months of delivery.

### (b) Compensability

51. The primary issue raised by these claims is whether the failure of the Kuwaiti parties to pay the amounts due was a direct result of Iraq's invasion and occupation of Kuwait. Following the "E2" Panel's findings in its first report, this Panel has held that claimants must provide specific proof of the direct link between Iraq's invasion and occupation of Kuwait and the Kuwaiti buyer's non-payment for goods delivered. 28/

52. Adequate proof that a Kuwaiti party's inability to perform its contractual obligations resulted from Iraq's invasion and occupation of Kuwait would include a showing that performance was no longer possible, for example, because in the case of a business, it was rendered bankrupt or insolvent, or ceased to exist as a direct result of Iraq's invasion and occupation of Kuwait; or, in the case of an individual, he or she was killed or was physically impaired as a direct result of Iraq's invasion and occupation of Kuwait. 29/

53. The Panel confirms the above conclusions with regard to the directness requirement of Security Council resolution 687 (1991) for claims based on the non-payment for goods delivered to Kuwaiti parties, and applies the same to the claims in the present instalment.

### (c) Verification and valuation

54. The existence of a contractual relationship must first be ascertained, and proof of that contract must include the payment terms, the price of the goods and the due date for payment. In addition, to prove the performance of the contract, the claimant must submit transportation documents, such as a bill of lading or an airway bill, or documents evidencing receipt by the buyer.

55. As described in paragraph 52 above, the Panel also requires specific evidence to demonstrate that the loss resulted directly from Iraq's invasion and occupation of Kuwait. For example, a mere assertion by the claimant-seller that it made unsuccessful efforts to trace the buyer is not sufficient evidence that the buyer did not pay for the goods as a direct result of the invasion and occupation of Kuwait.

56. Where a claimant has satisfied the evidentiary criteria outlined above, the normal measure of compensation is the contract price of the goods for which payment is outstanding plus any reasonable incidental costs directly resulting from the non-payment, such as banking charges for the

cancellation of letters of credit that were not honoured. However, as concluded in paragraph 43 above, costs collateral to the contract, such as interest payments on loans or other finance costs for the production of goods or for the claimant's commercial operations in general, have not been included in the recommended compensation.

## B. Interrupted contracts

### 1. Goods lost or destroyed in transit

#### (a) Claims description

57. Several claims in the present instalment are based on goods lost or destroyed in transit to Kuwait.

58. Many claimants state that the goods were either at the airport, on the docks, in warehouses or customs area of one of Kuwait's three maritime ports, or were being held at the storage facilities of agents or transportation companies at the time of the invasion. Other claimants state that they do not know what became of the goods due to their inability to locate the buyer or because of the general state of civil disorder in Kuwait. The claimants generally seek compensation for the unpaid contract price of the goods.

#### (b) Compensability

59. The Panel, recognising that there were military operations and a breakdown of civil order in Kuwait during the period of Iraq's invasion and occupation of Kuwait, finds, as it did in the E2(4) report, with respect to the compensability of claims for goods lost in transit to Kuwait, that paragraph 21 of Governing Council decision 7 provides an adequate basis for a finding of direct loss in respect of such claims. 30/

60. The Panel also notes the practical difficulties faced by claimants in obtaining specific proof of the circumstances in which the goods were lost due to the breakdown of civil order and the widespread destruction of property at Kuwaiti air and sea ports. 31/ Consequently, the Panel reiterates the following rule with reference to the claims under review: in the absence of evidence to the contrary, where non-perishable goods arrived at a Kuwaiti sea port on or after 2 July 1990 or at a Kuwaiti airport on or after 17 July 1990 and could not thereafter be located by the claimant, an inference can be made that the goods were lost or destroyed as a direct result of Iraq's invasion and occupation of Kuwait including the ensuing breakdown of civil order. 32/ Where, on the other hand, the goods arrived

in Kuwait prior to the above stated dates, specific evidence is required to show that the goods were lost or destroyed as a direct result of Iraq's invasion and occupation of Kuwait.

61. In certain claims, at the time the goods were lost, the title to the goods or the risk of loss may have already passed to the other party under the terms of the contract. 33/ The Panel finds that, irrespective of whether the risk of loss or title to the goods had passed to the buyer under the contract, provided that multiple recovery for the same loss is avoided, a claim for compensation may be maintained by a seller who has not been paid for the goods, since delivery of the goods to the buyer was prevented due to Iraq's invasion and occupation of Kuwait and the claimant has incurred an actual loss. 34/ As the Panel has previously noted, this rule applies regardless of which party bore the risk of loss under a *force majeure* provision in the contract. 35/

### (c) Verification and valuation

62. A claim for goods lost in transit to a Kuwaiti buyer must be substantiated by evidence of shipment to Kuwait from which an arrival date may be estimated, for example, a bill of lading, an air waybill or a truck consignment note. 36/ The claimant must also produce evidence of the value of the goods, such as an invoice, a contract or a purchase order.

63. Where a claimant has satisfied the evidentiary criteria described above, compensation is based on an assessed value of the lost goods, plus any reasonable costs directly resulting from the loss such as costs involved in trying to locate the goods. However, as concluded in paragraph 43 above, costs collateral to the contract, such as interest payments on loans or other finance costs for the production of goods or for the claimant's commercial operations in general, have not been included in the recommended compensation.

## 2. Goods diverted en route to buyer

### (a) Claims description

64. Approximately 10 claimants seek compensation for losses suffered as a result of shipments originally dispatched to a buyer in Iraq or Kuwait, which were diverted en route as a result of Iraq's invasion and occupation of Kuwait. The claimants allege that the goods were sold at a price below the original contract price or that they were scrapped. Compensation is sought for the contract price of the goods or, where subsequently resold, for the difference between the original contract price and the resale price. The claimants also seek compensation for additional costs incurred

in the transportation and storage of the goods, in their repackaging or redesign, and other expenses incurred in connection with the resale to third parties.

### (b) Compensability

65. With respect to claims for losses arising from the diversion of shipments destined for Kuwait, the Panel recalls its prior findings with respect to the factual circumstances surrounding the causes of the losses alleged. The effects on the economy and population of Kuwait caused by Iraq's invasion and occupation are well documented in United Nations reports, as well as in other panel reports of this Commission. 37/ Within hours of entering Kuwait, Iraqi forces seized control of the country, closing all ports and the airport, imposing a curfew, and cutting off the country's international communications links. Access to Kuwait by the sea was prevented by the laying of mines in its offshore waters. The widespread destruction of property by Iraqi forces and the breakdown of civil order in Kuwait would also have deterred the dispatch of goods to Kuwait by a seller. Consequently, the Panel concludes that the supply of goods to Kuwait between 2 August 1990 and 2 March 1991 was prevented as a direct result of Iraq's invasion and occupation of Kuwait. 38/

66. With respect to deliveries destined for Iraq, the Panel finds that the losses resulting from the diversions thereof resulted directly from Iraq's invasion and occupation of Kuwait. The Panel reached this conclusion in view of the prevailing conditions in Iraq described in paragraph 39 above, including the military operations in the Persian Gulf region, the repudiation of foreign obligations by Iraqi officials and the disruption of transportation services to, from and within the Middle East caused by military operations (or the threat thereof) in the area, including Iraq's mine-laying activity in the Persian Gulf during the period of the invasion and occupation. 39/

67. In the context of losses arising from diverted deliveries, the claimant's duty to mitigate its losses, as required by Governing Council decision 9, would generally require that the claimant sell the undelivered goods to a third party in a reasonable time and in a reasonable manner. In addition, in discharging its duty to mitigate, the claimant must take reasonable steps to preserve the goods, in conditions appropriate to their nature, pending resale to a third party or resumption of performance of the original sales contract. 40/

### (c) Verification and valuation

68. A claim involving diverted goods must be substantiated by evidence that the shipment was diverted from its original destination as a direct result of Iraq's invasion and occupation of Kuwait. Such evidence would normally include a bill of lading, an additional invoice from the shipping company for diversion of the shipment or an invoice for storage costs following the diversion. Proof is also required of reasonable steps taken by the claimant in mitigation to reduce its loss, including the eventual disposition of the goods, the resale price or the salvage value thereof, or its efforts to resell the goods. Such evidence would include, for example, a sales invoice, proof of resale efforts, or evidence of write-off.

69. Where the claimant has resold the goods in a reasonable manner and within a reasonable time, the measure of compensation is the difference between the original contract price and the price in the substitute transaction, plus reasonable incidental costs, such as expenses incurred in returning the goods, stopping delivery or reselling the goods. Expenses saved and any gains on the resale transaction will be offset against the losses incurred. 41/ Where the claimant has not taken reasonable steps to dispose of the goods, compensation is reduced by the estimated fair market value of the goods. 42/ Where the claimant has established that the goods could not be resold, the measure of compensation is the initial contract price of the goods, less their salvage value and expenses saved, plus reasonable incidental costs.

## 3. Contracts interrupted before shipment

### (a) Claims description

70. Approximately 40 claims in the instalment involve contracts for the supply of goods and, in some cases, the provision of related services, that were interrupted by Iraq's invasion and occupation of Kuwait. Most of the contracts were with Kuwaiti and Iraqi buyers, while others involved parties in Saudi Arabia, United Arab Emirates and Bahrain. These contracts typically called for goods to be manufactured to the specifications of the buyer or for services to be performed at a project site.

71. Several of these claimants are suppliers or sub-contractors who had agreements with contractors ("main contractors") located in Austria, Belgium, Italy and the United States to manufacture equipment to the specifications of an Iraqi or Kuwaiti end-user or to deliver equipment or provide services to an end-user in Iraq or Kuwait.

72. The claimants state that completion of the contracts in question was made impossible by Iraq's invasion and occupation of Kuwait. Some claimants state that work had not yet begun under the contracts as of 2 August 1990. Other claimants state that the requisite manufacturing was complete by 2 August 1990 and the only remaining performance was shipment of the goods. Finally, others state that the necessary materials for manufacture were still being assembled and the goods were only partially manufactured at the time of Iraq's invasion of Kuwait. In these cases, delivery was typically scheduled for late 1990 through the middle of 1991. While some of these claimants were successful in reselling the manufactured goods to other customers, others allege that the unique nature of the goods made it impossible to find other buyers.

73. Where manufacturing had not started, the claimants usually seek compensation for the lost profits they expected to earn under the contract. Where manufacture had been completed and the goods could not be resold, the claimants generally seek to recover the contract price less the salvage value of the goods. Where the goods had been resold, compensation is usually sought for the difference between the contract price and the resale proceeds.

74. Where claimants suspended manufacture, they normally claim for costs incurred in performing the contract before 2 August 1990 plus expected profits under the contract. The alleged costs incurred typically include costs for the purchase of materials, expenditures for salaries and wages, and storage costs. Also, several claimants seek compensation for the additional interest and bank charges they were required to pay on financing arrangements which could not be honoured owing to the non-payment under the contract.

75. In a second category of claims usually relating to manufacturing or construction projects in Iraq or Kuwait, delivery of the goods had been made before 2 August 1990, but Iraq's invasion and occupation of Kuwait prevented the claimant from completing performance required by the contract, such as the provision of in-country assembly or installation, technical assistance, training or other services. Usually, the parties had agreed to payment terms based upon the progress of the work involved. Typically, the claimants seek to recover costs incurred prior to the suspension of performance and the profit that would have been earned from the contract.

(b) Compensability

76. In this section, the Panel gives consideration to the application of the "arising prior to" rule and the requirement of directness in the context of interrupted contracts.

(i) The jurisdiction of the Commission under the "arising prior to" clause

77. With reference to interrupted contracts with Iraqi parties in progress as of 2 August 1990, the "arising prior to" rule is applied to those portions of the performance that are separately identifiable in so far as the parties had agreed that a specified payment would be made for a particular portion of the overall work called for under the contract. 43/ Consequently, only claims relating to those portions of the overall work that were completed on or after 2 May 1990 are compensable. 44/

78. Where the underlying contract provided as a condition precedent to payment, approval or certification by the owner, the "arising prior to" rule is applied in the following manner: (1) where the approval should have occurred more than three months prior to 2 August 1990, but did not, claims for such amounts are not within the jurisdiction of the Commission; and (2) where approval should have occurred within three months prior to 2 August 1990, but did not, claims for such amounts are within the jurisdiction of the Commission. 45/

(ii) Directness

79. With respect to the directness requirement, paragraphs 9 and 10 of Governing Council decision 9 provide that Iraq is liable for losses arising from contracts that were interrupted as a direct result of the invasion and occupation of Kuwait. This liability extends to contracts with Iraqi parties as well as to those to which Iraq was not a party.

80. With respect to claims based on contracts with Kuwaiti parties, the Panel finds that the interruption of such contracts resulted from military operations and the breakdown of civil order in Kuwait during Iraq's invasion and occupation, as described in paragraph 65 above. These factors provide the causal link, as required by paragraph 21 of Governing Council decision 7, between the losses and Iraq's invasion and occupation of Kuwait. Where production was suspended or goods were undelivered and not sold to a third party, a relevant consideration under Governing Council decision 9 is whether the parties could have resumed the transaction after the cessation of hostilities and whether they have in fact resumed the transaction. 46/

81. With reference to the claims under review based on contracts with Iraqi parties, the Panel finds that, for the reasons set out in paragraphs 39 and 40 above, the performance of contracts for the manufacture and supply of goods to Iraq between 2 August 1990 and 2 March 1991, as well as during the subsequent period to 2 August 1991, was rendered impossible as a direct result of Iraq's invasion and occupation of Kuwait. 47/

82. Where the claimant has sold the goods originally destined for Iraq or Kuwait to an alternative buyer for the original contract price but seeks to recover the additional profit that it would have earned if it had also completed the original transaction interrupted by the invasion and occupation, the Panel finds that any loss that the claimant might have sustained as a result of not having completed the two sales is too remote and speculative to constitute a loss directly resulting from Iraq's invasion and occupation of Kuwait. 48/

83. With respect to claims based on the interruption of contracts with parties outside of Iraq or Kuwait, the Panel finds that the claimant must make a specific showing that its inability to perform the contract or the buyer's cancellation of the contract was directly caused by Iraq's invasion and occupation of Kuwait. Such specific showing would include, for example, the inability to deliver the goods to their intended destination due to the mines laid by Iraq in the Persian Gulf. On the other hand, the cancellation of an order by a buyer in a location that was not subject to military operations or threat thereof, due, for example, to the general instability in the region, is not sufficient to establish such a showing.

84. As regards the claims by suppliers or sub-contractors described in paragraph 71 above, the Panel takes note of the findings in the E2(1) report to the effect that, under Governing Council decision 9, paragraph 10, Iraq's liability extends to losses suffered in connection with contracts to which Iraq was not a party, and that this includes not only contracts between a Kuwaiti and a non-Kuwaiti party, but also sub-contractor arrangements to which no Iraqi entity was a party. 49/

85. The Panel agrees with these findings and determines that, in the claims before it, where a supplier's or sub-contractor's loss was the direct result of Iraq's invasion and occupation of Kuwait, as discussed in paragraphs 79-83 above, such loss is compensable provided that the circumstances of the claim do not indicate that the main contractor has received payment from the Iraqi or Kuwaiti end-user for the same loss. In particular, where payment arrangements under the main contract may have called for advance payments or progress payments, the Panel has exercised due diligence and has undertaken such inquiries as were practicable under

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Al-Watyah Jewellers Co. |
| UNCC claim number: | 4004077 |
| UNSEQ number: | E-00970 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 126,870 | 106,297 | Original loss of tangible property claim reclassified as loss of stock. Stock claim adjusted for stock build-up. See paragraphs 35 and 37-39 of the report. |
| Loss of profits | 56,603 | 50,697 | Claim adjusted to reflect historical results. See paragraphs 47-50 of the report. |
| TOTAL | 183,473 | 156,994 | |

The costs incurred or saved may include "variable costs" plus reasonable overhead costs. 52/

89. Where the goods have been sold to an alternative buyer, the normal measure of compensation is the difference between the original contract price and the resale price, plus reasonable incidental costs and expenses incurred in mitigating the loss such as additional transportation and storage costs, repackaging and other expenses of resale. Expenses saved by the non-delivery and gains on the resale transactions are set off against the losses incurred.

90. It is incumbent upon the claimant to demonstrate the steps taken in mitigation to avoid or reduce its loss. If the claimant has failed to reasonably mitigate its loss, the amount of recommended compensation will reflect such failure. The claimant will only receive compensation in an amount equal to the difference between the original contract price and the fair market value of the goods at the time when mitigation should have taken place. 53/ Where the claimant has established that, despite reasonable efforts, the goods could not be sold to an alternative buyer, for example, where they were shown to be specially manufactured to the specific demands of the customer, the claimant may recover the contract price, less salvage value and expenses saved, plus reasonable incidental costs and expenses incurred in mitigating the loss.

## C. Decline in business/course of dealing

### 1. Claims description

91. Several claimants seek compensation for loss of revenue from a decline in business or interrupted course of dealing during the period of Iraq's invasion and occupation of Kuwait and, in some cases, for a period of time thereafter. Most of these claims relate to operations in Kuwait which ceased completely, but losses are also alleged in connection with business operations in Israel, Saudi Arabia and the Netherlands. These claims are not based on specifically identifiable contracts but on the expected performance of the claimant's business operations in the area.

92. Most of the claimants were based outside of the Middle East. However, a number of claimants maintained branch offices there, while several conducted their business in the region through local agents or distributors.

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Asea Brown Boveri Electrical Co.
UNCC claim number: 4004080
UNSEQ number: E-00973

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 119,021 | 46,272 | Original tangible and income-producing property claims reclassified as loss of tangible property and loss of vehicles. Tangible property claim adjusted for depreciation and evidentiary shortcomings. See paragraphs 35-36 of the report. |
| Loss of vehicles | 26,764 | 9,545 | Claim adjusted for evidentiary shortcomings and to reflect M.V.V. Table values. See paragraphs 35 and 41 of the report. |
| Loss of profits | 197,117 | 149,647 | Claim adjusted to reflect historical results. See paragraphs 47-50 of the report. |
| TOTAL | 342,902 | 205,464 | |

the "E2" Panel that are relevant to the claims in this instalment are summarised in the table below.

| Area | Period |
|---|---|
| Iraq | 2 August 1990 - 2 March 1991 |
| Kuwait | 2 August 1990 - 2 March 1991 |
| Saudi Arabia (within the range of Iraq's scud missiles) | 2 August 1990 - 2 March 1991 |
| Persian Gulf north of the 27th parallel | 2 August 1990 - 2 March 1991 |
| Israel | 15 January - 2 March 1991 |
| Bahrain | 22 February - 2 March 1991 |

98. This Panel has reviewed the findings and conclusions of the "E2" Panel and adopts them for purposes of the claims under review.

### (b) Decline in business and definition of presence

99. In accordance with the findings in paragraphs 97 and 98 above, the Panel concludes that, if a claimant establishes that it was based in a compensable area during the relevant compensable period, a direct causal link is, in principle, established between the alleged decline in business and Iraq's invasion and occupation of Kuwait. Under such circumstances, the claimant is entitled to compensation "for the profits which, in the ordinary course of events, [the claimant] would have been expected to earn and which were lost as a result of a decline in business directly caused by Iraq's invasion and occupation of Kuwait." 57/

100. It has also been established in previous panel reports that, where a claimant was not based within the compensable area but maintained a presence within that area by way of a branch, agency or other establishment, losses from its decline in business are compensable under the same criteria as those suffered by claimants based within the compensable area. On the other hand, where the claimant did not have or maintain a presence within the compensable are-, such claims are to be

evaluated under standards established in paragraph 11 of Governing Council decision 9 as is further discussed in paragraph 102 below. 58/

101. The present instalment includes claims by companies which conducted business in the Middle East region through general distributors and commercial agents. The Panel is required to determine whether such trading links amount to a presence in a compensable area within the meaning of this rule. Given the independent position of the commercial agents or general distributors vis-à-vis the claimants in the claims under review, the Panel finds that the relationships between the claimants and these agents or distributors do not amount to a "presence" for purposes of a decline in business analysis. However, these relationships may be proof of an established course of dealing, the interruption of which could give rise to a compensable claim, as discussed below.

(c) Course of dealing

102. Where a claimant is based outside the compensable area and did not have a presence within that area, it may nevertheless maintain a claim based on transactions that occurred within the compensable area that had been a part of a regular course of dealing, under the provisions of paragraph 11 of Governing Council decision 9. 59/

103. This Panel concluded in the E2(4) report that a claim for lost profits based on transactions which had been a part of a business practice or course of dealing is compensable only under certain conditions: 60/

> "First, the claimant must show that there was a regular course of dealing in the past. Second, the claimant must demonstrate that 'a consistent level of income and profitability had been realised from such dealings.' Third, the claimant must demonstrate that that course of dealing evinces 'a well-founded expectation of further business dealings of the same character with the same party under readily ascertainable terms'". 61/

104. Several claims under review are based on profits expected from business arrangements that were yet to commence at the time of the invasion. The Panel finds that, in these claims, the claimants have failed to make the necessary special showing, described in the preceding paragraph, regarding a regular course of dealing and expectation of future business; therefore these claims are not compensable.

(d) Secondary compensation period and extraordinary profits

105. The Panel must determine whether to award compensation for decline in business or course of dealing losses that continued to be suffered after 2

March 1991 (a "secondary compensation period"). Noting that the full resumption of business activities would not necessarily have taken place immediately upon cessation of military operations and that there may have been a period of time during which those events could have had a continuing effect on the business of the claimant, the Panel reaffirms that decline in business and course of dealing losses may be compensable for a secondary period extending beyond 2 March 1991, "until the point where the claimant's business could reasonably have been expected to return to normal levels". 62/ With regard to the claims under review, the Panel determined the appropriate secondary compensation period on the basis of the circumstances applicable to each claim.

106. In each case, the Panel must also ascertain whether claimants had experienced extraordinary profits after the cessation of hostilities that were directly attributable to the invasion. With regard to the claims under review, where such profits were found to have occurred, they were set off against any compensation recommended.

### 3. Verification and valuation

107. With respect to decline in business claims, it must first be ascertained from documents such as registration certificates, business licenses or lease agreements that the claimant was either based in or maintained a presence in a compensable location. Where neither of these criteria has been met, the Panel examines whether the claimant has produced sufficient evidence, such as contracts, purchase orders, delivery records, or distributorship agreements, to demonstrate a previous course of dealing, as described in paragraph 102-103 above, which was interrupted by Iraq's invasion and occupation of Kuwait.

108. The amount of compensation is calculated by projecting lost revenue of the operations in question from monthly historical data or, where such data is not available, from annual data. 63/ Lost revenues are reduced by variable costs and wage costs, which were not incurred as a result of the decline in business, to arrive at the amount of lost profits for the pertinent period. Relevant documents will include, for example, financial statements and management accounts. The amount of compensation will be reduced if the Panel considers that the claimant has not taken reasonable steps to mitigate its losses. A further description of the relevant valuation method is set out in the E2(2) report. 64/

## D. Increased costs

### 1. Expenses related to employees

### (a) Salaries and termination payments, staff incentives, and reimbursement for personal property losses

#### (i) Claims description

109. Several claimants seek compensation for salaries and wages paid to non-productive employees, including those employees who were held hostage in Iraq and Kuwait, those who were evacuated from the Middle East region, and those employees remaining in the region, particularly in Saudi Arabia, who were unable to work productively as a result of the security situation at the time of Iraq's invasion and occupation of Kuwait. Also claimed in some cases are benefits that were paid to staff including, in one case, support provided to the families of detained staff.

110. A claimant located in Saudi Arabia seeks compensation for redundancy payments that were made to staff evacuated from Saudi Arabia to their home countries in Europe during the period of Iraq's invasion and occupation of Kuwait. Another claimant based in the United Kingdom seeks compensation for the termination costs incurred when it made redundant approximately four hundred employees at its plant in the United Kingdom allegedly due to the suspension of an ongoing contract with an Iraqi party.

111. Some claimants seek compensation for additional benefits, such as war bonus payments and personal comprehensive war risk insurance cover, provided to employees to encourage them to continue working in Saudi Arabia during the period of Iraq's invasion and occupation of Kuwait. One of the claimants alleges that these expenses were necessary to enable it to meet existing contractual obligations.

112. Compensation is also sought for payments made to expatriate staff for personal property abandoned in the process of their evacuation from Kuwait during the period of Iraq's invasion and occupation of Kuwait.

#### (ii) Compensability

113. Salary and termination payments to non-productive employees located in Iraq and Kuwait during the period of Iraq's invasion and occupation of Kuwait are compensable in principle, due to conditions existing in those locations at the time which made it unfeasible for staff to be employed in productive tasks. 65/ Claims with respect to salary payments to employees in other areas, which were the subject of military operations or threat of military action as described in paragraph 97 above, are compensable to the extent that the lack of productivity was not due to circumstances other

than Iraq's invasion and occupation of Kuwait. 66/ Where employees located outside of the compensable areas were dismissed due to the claimant's inability to continue a contract with a party in a compensable location, a claim for termination payments is compensable only if the employees were specifically assigned to the contract and the contract was terminated as a direct result of Iraq's invasion and occupation of Kuwait. Compensation is further subject to the claimant's duty to mitigate its loss by, for example, reassigning the staff to other productive tasks.

114. Salaries and wages paid after repatriation are not compensable where the claimant failed to explain why its employees could not be assigned to other productive tasks after repatriation. 67/ With respect to termination or severance payments only "the contractually or legally required payments for early termination are compensable". 68/

115. Costs of bonus payments and incentives provided to staff, where related to work in a compensable location, are compensable to the extent that they have been determined to be necessary to enable the claimant to continue its operations and were reasonable in amount. 69/

116. Claims for payments made to staff for personal property lost in Iraq or Kuwait are compensable in principle, where such payments were made pursuant to legal obligations or otherwise appear justified and reasonable under the circumstances, and to the extent that the employee has not already been compensated by the Commission for such losses. 70/

### (iii) Verification and valuation

117. For all payments to staff, the claimant must establish that the persons to whom the payments were made were its employees at the relevant time and that the cost was in excess of the claimant's usual expenditure for those staff or was a cost related to non-productive employees whose lack of productivity was a direct result of Iraq's invasion and occupation of Kuwait. Proof of employment of the staff in a compensable area, or in relation to the performance of a contract with a party in a compensable area, is also required, as is evidence of payment of the alleged sums. Relevant documents in this regard will include contracts of employment, payroll records and other contemporaneous internal documents of the claimant.

118. With respect to termination payments and unproductive salary payments the Panel also requires evidence establishing that the employees in question could not otherwise be re-deployed to other assignments that would have avoided the increased cost. Where the claim relates to payments to

staff for lost personal property, the presence of the personal property in a compensable area must also be ascertained.

119. The normal measure of compensation for payments to staff is the amount of the claimant's expenditure, provided it is appropriate and reasonable.

### (b) Evacuation costs

#### (i) Claims description

120. Several claimants seek compensation for the cost of evacuating staff and their families from Kuwait, Saudi Arabia and the United Arab Emirates during the period of Iraq's invasion and occupation of Kuwait. The expenses for which claimants seek compensation include cost of travel, temporary accommodation in safe locations pending onward journey to the evacuees' home countries and associated expenditures for food.

#### (ii) Compensability

121. Paragraph 21 of Governing Council decision 7 provides that losses suffered as a result of the "departure of persons from or their inability to leave Iraq or Kuwait" are to be considered the direct result of Iraq's invasion and occupation of Kuwait. Also, paragraph 22 of decision 7 provides that compensation is "available to reimburse payments made or relief provided by corporations or other entities to others - for example, to employees ... for losses covered by any of the criteria adopted by the Council." Consequently, costs incurred in connection with evacuation from areas that were the subject of military operations or threat of military action by either side are, in principle, compensable. 71/ However, only extraordinary or incremental and temporary expenses are compensable. 72/ In the circumstances of the claims under review, costs incurred for transport, accommodation, food and urgent medical treatment are compensable, provided they would not have been incurred by the claimant in any event, such as at the end of the employee's contract. 73/

#### (iii) Verification and valuation

122. Sufficient evidence, such as airline or other carrier ticket stubs and invoices from travel agents, is required to demonstrate that the evacuation was conducted as alleged by the claimant and that the claimant incurred the amount of the expense alleged. The Panel must be satisfied that the costs were incremental and were not such as would have been incurred by the claimant in any event in the course of its operations.

123. The measure of compensation is the ascertainable amount of the expense incurred less a reduction corresponding to the costs that would normally have been incurred by the claimant.

## 2. Other increased costs

### (a) Claims description

124. Various claims have been filed for other increased costs incurred by claimants in the conduct of their business operations that are alleged to have resulted from Iraq's invasion and occupation of Kuwait. Such costs include the cost of establishing a temporary office away from an area subject to the threat of military operations, costs of freight, storage, and war risk insurance paid for goods and raw materials shipped to, from and within locations in the Middle East.

### (b) Compensability

125. The Panel finds that only those increased costs incurred as a direct result of Iraq's invasion and occupation of Kuwait, for example, with respect to operations in locations that were the subject of military operations or threat of military action, are compensable. 74/ Moreover, these losses are compensable only to the extent that they were incremental and would not have been incurred in any event, or were not passed on to customers or otherwise recovered from other sources.

### (c) Verification and valuation

126. With respect to increased costs, it must be established that the claimant incurred the costs in question and that they were incremental to the claimant's usual costs. Relevant documents will include invoices, management accounts and other internal contemporaneous records of the claimant.

127. For those increased costs found to be compensable, the measure of compensation is the ascertainable cost incurred less an appropriate allowance to reflect expenses that would have been incurred in any event.

## E. Tangible property losses

## 1. Claims description

128. Several claimants in the instalment seek compensation for tangible property that was stolen, lost or destroyed in Iraq and Kuwait during the

period of the invasion and occupation. The property in question includes branch office furniture and equipment, inventory, vehicles and machinery, some of which were on demonstration or exhibition in trade fairs, as well as cash.

### 2. Compensability

129. It follows from paragraphs 12 and 13 of Governing Council decision 9 that claims for damaged or lost tangible assets in Iraq or Kuwait, including cash losses, are compensable in principle where the claimant can show that the assets were in the location at the relevant time and were lost or destroyed during Iraq's invasion and occupation of Kuwait. In particular, the Panel finds that in the claims under review, where property was lost because it was left unguarded by personnel departing Iraq or Kuwait, such loss is direct.

### 3. Verification and valuation

130. The claimant's ownership or interest in the property and the presence of the property in the compensable location at the time of Iraq's invasion and occupation of Kuwait must be verified. The claimant must also provide sufficient evidence to establish that the loss of the property was a direct result of the invasion and occupation, including, for example, evidence that the property was left unguarded due to the departure of personnel. Relevant documents will include asset registers, inventory lists and import certificates. A high level of scrutiny is applied to claims for the loss of cash because of the risk of overstatement. 75/

131. For claims based on replacement costs, the replacement value must first be ascertained and an assessment made as to whether the claimant's calculation of the loss reflects appropriate depreciation, normal maintenance or betterment. Appropriate adjustments are then made as necessary. 76/

132. For claims based on net book value, the Panel must first establish the cost and date of acquisition of the asset from the provided documents. The depreciation applied by the claimant is then reviewed for reasonableness and the claim adjusted if necessary. 77/

## F. Legal fees other than claims preparation costs

### 1. Claims description

133. Compensation is sought by some claimants for the cost they incurred in the preparation of claims submitted to a national export credit guarantee agency. The claimants received compensation from the agency on the condition that they pursue claims with the Commission for compensation that would later be reimbursed to the agency by the claimants.

### 2. Compensability

134. The Panel finds that costs incurred in the preparation of claims to be submitted to an export credit guarantee agency or other insurance company do not constitute a loss resulting directly from Iraq's invasion and occupation of Kuwait and are therefore not compensable.

# IV. INCIDENTAL ISSUES

## A. Date of loss

135. The Panel must determine "the date the loss occurred" for the purpose of determining the appropriate exchange rate to be applied to losses stated in currencies other than in United States dollars, and with respect to the awarding of interest at a later date in accordance with Governing Council decision 16. The date when the loss occurred depends most significantly on the character of the loss, and the following paragraphs address each loss type in turn.

136. With respect to claims based on contract losses, the Panel notes that the date of loss for each contract would normally depend on the facts and circumstances surrounding the non-performance of the contract. 78/ However, given the large number of contracts before the Commission and the significance of one event (i.e., Iraq's invasion of Kuwait) on contractual relations, the Panel finds that 2 August 1990 represents an administrable and appropriate date of loss for the contract claims now under consideration.

137. With respect to claims for decline in business leading to loss of profits or claims for increased costs, the Panel notes that such losses in this instalment were suffered over extended periods of time, and that such losses were generally spread over the period of loss. Given these circumstances, the Panel selects the mid-point of the relevant compensable

period (including, as the case may be, relevant primary or secondary periods) during which the particular loss occurred as the date of loss. 79/

138. With respect to claims for payment or relief to others, including evacuation costs, the Panel notes that such losses likewise have been incurred throughout the period of Iraq's invasion and occupation of Kuwait and, therefore, the Panel selects the mid-point of the occupation period as the date of loss for costs of this nature, that is, 15 November 1990. 80/

139. With respect to claims for loss of tangible assets, the Panel selects 2 August 1990 as the date of loss as that date generally coincides with the claimant's loss of control over the assets in question in this instalment. 81/

## B. Currency exchange rate

140. Many of the claimants have advanced claims in currencies other than United States dollars. The Panel has assessed all such claims and performed all claim calculations in the original currencies of the claims. Since the Commission issues its awards in United States dollars, the Panel must determine the appropriate rate of exchange to be applied to claims where the losses are alleged in other currencies. The Panel has been guided by its previous decisions, and by decisions of other Panels. A particular rule is established for Kuwaiti dinars, and is set forth in paragraph 146.

141. Noting that all prior Commission compensation awards have looked to the United Nations Monthly Bulletin of Statistics (the "UN Monthly Bulletin") for determining commercial exchange rates into United States dollars, the Panel adopts that source for the data to be utilised in exchange rate calculations. The Panel notes that the UN Monthly Bulletin provides a monthly figure for each currency which reflects the average exchange rate for that currency for the last day of the month in question.

142. For claims based on contract losses in this instalment, the Panel, noting that the date of loss set forth in paragraph 136 for such claims is 2 August 1990, adopts the last available exchange rate unaffected by Iraq's invasion and occupation of Kuwait, as reported in the UN Monthly Bulletin.

143. For claims for decline in business leading to loss of profits and claims for increased costs, the Panel decides that the appropriate rate will be the average of the rates reported in the UN Monthly Bulletin for the months over which the particular claimant is compensated. 82/

144. For claims for payment or relief to others within this instalment, including evacuation costs and security measures, the Panel, noting that

the date of loss set forth in paragraph 138 for such claims is 15 November 1990 and consistent with the decision of the "F1" Panel, decides that the appropriate rate will be that rate reported in the UN Monthly Bulletin for the month of November 1990. 83/

145. For claims for the loss of tangible assets, the Panel, noting that the date of loss set forth in paragraph 139 for such claims is 2 August 1990, adopts the last available exchange rate unaffected by Iraq's invasion and occupation of Kuwait, as reported in the UN Monthly Bulletin.

146. The above rules apply to claims stated in currencies other than the Kuwaiti dinar. For claims denominated in Kuwaiti dinars, the Panel, noting the extreme fluctuation in the value of that currency during the period of Iraq's occupation of Kuwait and the decisions of this and other Panels, adopts the rate of exchange for 2 August 1990, namely the last available exchange rate unaffected by Iraq's invasion and occupation of Kuwait, as reported in the UN Monthly Bulletin. 84/

## C. Interest

147. Governing Council decision 16 states that "[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award". The Governing Council further specified that it would consider the method of calculation and of payment of interest at a later date and that "[i]nterest will be paid after the principal amount of awards".

148. With respect to the awarding of interest, in accordance with Governing Council decision 16, the Panel notes that the dates of loss defined in paragraphs 135 to 139 above may be relevant to the later choice of the dates from which interest will accrue for all compensable claims.

## D. Claims preparation costs

149. Several claimants seek compensation for the cost incurred in the preparation of claims for submission to the Commission. In a letter dated 6 May 1998, the Executive Secretary of the Commission advised the Panel that the Governing Council intends to resolve the issue of claims preparation costs at a future date. Accordingly, the Panel takes no action with respect to claims for such costs.

## V. RECOMMENDATIONS

150. Based on the foregoing, the Panel recommends that the amounts set out in annex II below, totalling USD 13,671,106, be paid in compensation for direct losses suffered by the claimants as a result of Iraq's invasion and occupation of Kuwait.

Geneva, 29 September 2000

(Signed) Mr. Bruno Leurent
Chairman

(Signed) Mr. Kaj Hobér
Commissioner

(Signed) Mr. Andrey Khoudorojkov
Commissioner

## Notes

1/ The category "E2" population consists of claims submitted by non-Kuwaiti corporations, public sector enterprises and other private legal entities (excluding oil sector, construction/engineering, export guarantee/insurance and environmental claims).

2/ This is the second report and recommendations of the "E2A" Panel to the Governing Council concerning E2 claims, its first report being the Report and Recommendations of the Panel of Commissioners concerning the fourth instalment of E2 claims (the "E2(4) report").

3/ Two claims were withdrawn by the claimants after the commencement of the Panel's review of the claims in this instalment. Further, at the request of the Panel, two claims identified in annex II have been transferred to a different Panel to be considered with related claims.

4/ The figure cited in the text is the total amount for all 99 claims submitted to the Panel in this instalment. This figure includes amounts claimed for interest and claim preparation costs. As explained in paragraphs 147-149 below, the Governing Council will consider claims for these types of losses at a future date where an amount has been awarded for the principal sum claimed. The total amount claimed, excluding the two transferred claims and the two claims that were withdrawn is USD 305,705,021.

5/ See Governing Council decision 10, section IV.

6/ The issue of Iraq's liability for losses falling within the Commission's jurisdiction has, thus, already been determined by the Security Council.

7/ This is confirmed in paragraph 6 of decision 15 of the Governing Council which states that "[t]here will be other situations where evidence can be produced showing claims are for direct loss, damage or injury as a result of Iraq's unlawful invasion and occupation of Kuwait".

8/ See also, E2(4) report, paras. 154-157.

9/ "United Nations Compensation Commission Claim Form for Corporations and Other Entities (Form E): Instructions for Claimants", ("Form E") para. 6.

10/ Form E, para. 6.

11/ Governing Council decision 7, para. 23. In addition, the Governing Council stated in paragraph 5 of decision 15 that a claimant seeking compensation for business losses must provide "detailed factual descriptions of the circumstances of the claimed loss, damage or injury" in order for compensation to be awarded.

12/ Governing Council decision 46.

13/ The Rules, art. 35(1).

14/ E2(4) report para. 89-96.

15/ Ibid., para. 94.

16/ Ibid., para. 89.

17/ Ibid., para. 96, note 23.

18/ Ibid., para. 92.

19/ In formulating this rule, the Panel was guided by article 47(a) of the Uniform Customs and Practice for Documentary Credits (1983 revision), ICC Publication No. 400. This provision states that, where a credit does not stipulate a specified period after the date of shipment during which presentation of documents must be made, "banks will refuse documents presented to them later than 21 days after the date of issuance of the transport document(s)."

20/ E2(4) report, paras. 95, 96(b).

21/ See, for example, E2(5) report, para. 64, E1(3) report, para. 208.

22/ Further elaboration of the Panel's findings in relation to this conclusion are set out in the E2(4) report, paras. 106-116.

23/ Ibid.

24/ See discussion in the E2(4) report, para. 116.

25/ E2(4) report, paras. 118-119.

26/ See E2(4) report, paras. 159, 165.

27/ The Panel is mindful that, as a rule, a correspondent bank or a negotiating bank would have duly forwarded the documents to the issuing bank. Also, in most cases, it would have been difficult for a claimant to obtain proof of the receipt of documents by the Iraqi issuing bank.

28/ E2(4) report, paras. 135-136.

29/ Ibid.

30/ Ibid., paras. 127-131.

31/ Ibid., paras. 145-146.

32/ Ibid., para. 147(b).

33/ For example, depending on the contract, the risk of loss may have passed to the buyer when the goods were handed over to the first carrier.

34/ E2(4) report, para. 143

35/ Ibid., para. 144.

36/ Ibid., para 147.

37/ See, for example, "Report to the Secretary-General by a United Nations mission, led by Mr. Abdulrahim A. Farah, former Under-Secretary General, assessing the scope and nature of damage inflicted on Kuwait's infrastructure during the Iraqi occupation of the country from 2 August 1990 to 27 February 1991" (S/22535) (29 April 1991) the "Farah Report"); United Nations Economic and Social Council (ECOSOC), "Report on the

Situation of Human Rights in Kuwait under Iraqi Occupation, by Walter Kälin, Special Rapporteur of the ECOSOC Commission on Human Rights, E/CN/.4/1992/26 (16 January 1992)(the "Kälin Report"); C(1) report, passim. See also, E2(1) report, paras. 146-147.

38/ See para. 59 above, and E2(4) report, paras. 127-131, 149.

39/ E2(4) report, para. 123.

40/ Ibid., paras. 202-203.

41/ Ibid., paras. 161-162; 203(d).

42/ Ibid., para. 203(c).

43/ E2(1) report, para. 98.

44/ Ibid., paras. 90, 98

45/ Ibid., para. 100.

46/ Governing Council decision 9, para. 10.

47/ E2(4) report, para. 123.

48/ Ibid., para. 167.

49/ E2(1) report, para. 145, note 56.

50/ See also, E2(4) report, paras. 204-212.

51/ See also E2(4) report, paras. 159, 165.

52/ "Variable costs" are those expenses incurred in reliance upon and specifically with reference to the contract and which, if the contract were not to be performed, could be avoided.

53/ The Panel must be satisfied that the claimant reasonably mitigated its loss, such as by suspending production of specified goods to be supplied under the contract or by attempting to sell to third parties goods that could not be delivered to the Iraqi or Kuwaiti purchaser.

54/ E2(2) report, para. 64.

55/ E2(1) report, paras. 158-161. See also, E2(2) report, para. 67, notes 13 and 14.

56/ E2(3) report, para. 77.

57/ E2(2) report, para. 78; E2(3) report, para. 101.

58/ See, for example, E2(3) report, para. 102; E2(4) report, para. 181.

59/ Paragraph 11 of Governing council decision 9 provides:

"Where a loss has been suffered relating to a transaction that has been part of a business practice or course of dealing, Iraq is liable according to the principles that apply to contract losses. No liability exists for losses relating to transactions that were only expected to take place based on a previous course of dealing."

60/ E2(4) report, paras. 183-186.

61/ Ibid., para. 186.

62/ See also, E2(2) report, para. 142.

63/ E2(2) report, paras 146-152.

64/ Ibid.

65/ E2(1) report, paras. 213, 237; E3(1) report, paras. 172-174.

66/ See E2(1) report, paras. 252-253, with respect to employee productivity losses for staff in Saudi Arabia. See also E2(5) report, para. 130 with respect to salary payments to staff in Bahrain.

67/ E2(1) report, paras. 215, 238. See also E2(3) report, para. 161.

68/ E2(3) report, para. 161. See also F(1.1) report, paras. 66 and 68.

69/ E2(3) report, para. 100.

70/ Governing Council decisions 1 and 7; E2(3) report, para. 162; F1(1.1) report, paras. 66-68.

71/ E2(1) report, paras. 133, 153; E2(2) report, para. 60; E2(3) report, paras. 71-72; E3(1) report, para. 177; F(1.1) report, paras. 94-96.

72/ See also E2(3) report, para. 79, citing F1(2) report, para. 101.

73/ E2(3) report, para. 79, citing E3(1) report, paras. 177-178.

74/ E2(3) report, paras. 87-100, 156-158.

75/ See E2(5) report, para. 152.

76/ E2(1) report, paras. 271-273.

77/ E2(3) report, paras. 203-205.

78/ Ibid., para. 211.

79/ Ibid., paras. 209-210.

80/ Ibid., para. 212.

81/ Ibid., para. 213.

82/ Ibid., para. 216.

83/ Ibid., para. 218; F1(1.1) report, para 101.

84/ E2(3) report, para. 220

## Annex I

## LIST OF REASONS STATED IN ANNEX II FOR DENIAL IN WHOLE OR IN PART OF THE CLAIMED AMOUNT

| No. | Compensability | Explanation |
|---|---|---|
| 1. | "Arising prior to" exclusion | All or part or the claim is based on a debt or obligation of Iraq that arose prior to 2 August 1990 and is, thus, outside the jurisdiction of the Commission pursuant to Resolution 687 (1991). |
| 2. | Part or all of loss is not direct | The loss, in whole or part, is not a direct loss within the meaning of Resolution 687 (1991). |
| 3. | Part or all of loss is outside compensable period | All or part of the loss occurred outside the period of time during which the Panel has determined that a loss may be directly related to Iraq's invasion and occupation of Kuwait. |
| 4. | Part or all of loss is outside compensable area | All or part of the loss occurred outside the geographical area within which the Panel has determined that a loss may be directly related to Iraq's invasion and occupation of Kuwait. |
| 5. | Trade embargo is the sole cause | The loss claimed was caused exclusively by the trade embargo or related measures pursuant to Resolution 661 (1990) or other relevant resolutions and is accordingly not compensable. |
| 6. | No proof of loss | The claimant has not provided sufficient evidence to establish that it suffered an actual loss. |
| 7. | Non-compensable expectancy | No liability exists for losses related to transactions that were only expected to take place. |
| 8. | No proof of direct loss | The claimant has failed to submit sufficient evidence to demonstrate that the loss was a direct result of Iraq's invasion and occupation of Kuwait. |

| No. | Compensability | Explanation |
|---|---|---|
| 9. | Part or all of the loss is unsubstantiated | Claimant has failed to file documentation substantiating its claim; or, where documents have been provided, these do not demonstrate the circumstances or amount of part or all of the claimed loss as required under article 35 of the UNCC Provisional Rules for Claims Procedure. |
| 10. | Failure to comply with formal filing requirements | The claimant has failed to meet the formal requirements for the filing of claims as specified under article 14 of the UNCC Provisional Rules for Claims Procedure. |
| 11. | Calculated loss is less than loss alleged | Applying the Panel's valuation standards, the value of the claim was assessed to be less than that asserted by the claimant. |
| 12. | Deduction for failure to mitigate | The claimant has not taken such measures as are reasonable in the circumstances to reduce or minimize the loss as required under paragraph 23 of Governing Council decision 9 and paragraph 9(IV) of decision 15. |
| 13. | Claim preparation costs | The issue of claim preparation costs is to be resolved by the Governing Council at a future date. |
| 14. | Interest | The issue of methods of calculation and of payment of interest will be considered by the Governing Council at the appropriate time pursuant to Governing Council decision 16. Moreover, where the Panel has recommended that no compensation be paid for the principal amounts claimed, no compensation is recommended for interest claimed on such principal amounts. |
| 15. | Principal sum not compensable | Where the Panel has recommended that no compensation be paid for the principal amounts claimed, no compensation is recommended for interest claimed on such principal amounts. |

## Annex II

## RECOMMENDED AWARDS FOR THE SIXTH INSTALMENT OF "E2" CLAIMS

| | Country | Claimant and UNCC claim No. | Total amount claimed, including permissible amendments a/ | | | Reclassified claim d/ | | | | Decision of the Panel of Commissioners e/ | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Amount claimed in original currency b/ | | Total amount claimed restated in USD c/ | Type of loss | Sub category | Amount claimed in original currency | | Amount recommended in original currency | | Amount recommended in USD | Reasons for denial or reduction of award | Report citation | Total award in USD |
| 1 | Austria | Strabag Österreich Aktiengesellschaft<br>4000112 | ATS | 49,341,935 | 4,486,446 | Business loss or course of dealing | Loss of value of shareholding | ATS | 40,000,000 | Claim transferred to a different Panel to be considered with related claims. | | | | | N/A |
| | | | | | | Contract | Goods delivered to Kuwait but not paid for | ATS | 9,341,935 | | | | | | |
| 2 | Austria | Franz Janetschek Werkzeugbau Prazisionsteile GmbH<br>4000122 | ATS | 3,000,000 | 272,777 | Contract | Interrupted contract (Amount owed to supplier) | ATS | 1,700,000 | ATS | 0 | 0 | Part or all of loss is unsubstantiated; No proof of loss. | Paras. 23 29; 27. | 0 |
| | | | | | | Contract | Interrupted contract (Loss of profit) | ATS | 500,000 | ATS | 0 | 0 | Part or all of loss is unsubstantiated; No proof of loss. | Paras. 23 29; 87; 27. | |
| | | | | | | Contract | Increased costs (Defence of legal action) | ATS | 800,000 | ATS | 0 | 0 | Part or all of loss is unsubstantiated; No proof of loss. | Paras. 23 29; 27. | |

|  | Country | Claimant and UNCC claim No. | Total amount claimed, including permissible amendments a/ |  |  | Reclassified claim d/ |  |  |  | Decision of the Panel of Commissioners e/ |  |  |  |  |  |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
|  |  |  | Amount claimed in original currency b/ |  | Total amount claimed restated in USD c/ | Type of loss | Sub-category | Amount claimed in original currency |  | Amount recommended in original currency |  | Amount recommended in USD | Reasons for denial or reduction of award | Report citation | Total award in USD |
| 3 | Austria | Linsinger Maschinenbau GES. M.B.H.<br>4000131 | ATS | 4,657,000 | 423,441 | Contract | Goods partially manufactured and not shipped | ATS | 3,315,000 | Claim transferred to a different Panel to be considered with related claims. |  |  |  |  | N/A |
|  |  |  |  |  |  | Interest | N/A | ATS | 1,342,000 |  |  |  |  |  |  |
| 4 | Bahrain | Mannai Aluminium & Glass. Division of Mannai Trading & Investment Co. Ltd.<br>4000078 | USD | 10,455 | 10,455 | Business loss or course of dealing | Increased costs (War risk insurance) | USD | 10,455 | USD | 2,160 | 2,160 | Part or all of loss is outside compensable area;<br>Part or all of the loss is unsubstantiated. | Paras. 97, 125; 23-29, 126. | 2,160 |
| 5 | Czech Republic | Prerovské Strojirny Ltd.<br>4000297 | USD | 5,000,185 | 5,000,185 | Contract | Interrupted contract (Loss of profit) | USD | 5,000,185 | USD | 0 | 0 | Part or all of loss is unsubstantiated;<br>No proof of loss. | Paras. 23-29, 87; 27. | 0 |
| 6 | Czech Republic | Zavody Silnoproude Elektrotechniky - Joint Stock Company holding<br>4000298 | USD | 820,498 | 820,498 | Contract | Goods delivered to Iraq but not paid for | USD | 613,876 | USD | 0 | 0 | "Arising prior to" exclusion. | Paras. 34-37. | 0 |
|  |  |  |  |  |  | Contract | Goods delivered to Kuwait but not paid for | USD | 13,645 | USD | 0 | 0 | No proof of direct loss. | Paras. 51-55. |  |
|  |  |  |  |  |  | Interest | N/A | USD | 192,977 | USD | 0 | 0 | Principal sum is not compensable. |  |  |

| | Country | Claimant and UNCC claim No. | Total amount claimed, including permissible amendments a/ | | | Reclassified claim d/ | | | | Decision of the Panel of Commissioners e/ | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Amount claimed in original currency b/ | | Total amount claimed restated in USD c/ | Type of loss | Sub category | Amount claimed in original currency | | Amount recommended in original currency | | Amount recommended in USD | Reasons for denial or reduction of award | Report citation | Total award in USD |
| 7 | Denmark | I.C.H. Industrial and Commercial Holding APS 4000047 | KWD | 83,441 | 15,316,274 | Business loss or course of dealing | Loss of profit | KWD | 83,441 | KWD | 31,709 | 109,720 | Calculated loss is less than loss alleged; Part or all of loss is unsubstantiated. | Paras. 24-28, 104; 108. | 109,720 |
| | | | DKK | 90,000,000 | | Business loss or course of dealing | Misappropriation of intellectual property | DKK | 90,000,000 | DKK | 0 | 0 | No proof of loss. | Para. 27. | |
| 8 | Egypt | Kaha Co. for Chemical Industries 4002638 | USD | 1,321,741 | 1,321,741 | Contract | Goods delivered to Iraq but not paid for | USD | 600,910 | USD | 12,370 | 12,370 | "Arising prior to" exclusion. | Paras. 34-37. | 12,370 |
| | | | | | | Contract | Goods manufactured but not shipped | USD | 6,964 | USD | 0 | 0 | Deduction for failure to mitigate. | Para. 90. | |
| | | | | | | Contract | Finance costs | USD | 713,667 | USD | 0 | 0 | Part or all of loss is not direct. | Para. 86. | |
| 9 | Egypt | Maasara Co. for Engineering Industries 4002639 | USD | 5,113,394 | 5,113,394 | Contract | Goods delivered to Iraq but not paid for | USD | 2,709,337 | USD | 0 | 0 | "Arising prior to" exclusion. | Paras. 34-37. | 0 |
| | | | | | | Contract | Goods manufactured but not shipped | USD | 1,381,378 | USD | 0 | 0 | Deduction for failure to mitigate. | Para. 90. | |
| | | | | | | Interest | N/A | USD | 1,022,679 | USD | 0 | 0 | Principal sum not compensable. | | |

|  | Country | Claimant and UNCC claim No. | Total amount claimed, including permissible amendments a/ |  |  | Reclassified claim d/ |  |  |  | Decision of the Panel of Commissioners e/ |  |  |  |  |  |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
|  |  |  | Amount claimed in original currency b/ |  | Total amount claimed restated in USD c/ | Type of loss | Sub-category | Amount claimed in original currency |  | Amount recommended in original currency |  | Amount recommended in USD | Reasons for denial or reduction of award | Report citation | Total award in USD |
| 10 | Egypt | Abu-Zaabal Co. for Speciality Chemicals<br>4002640 | USD | 2,701,875 | 2,701,875 | Contract | Goods delivered to Iraq but not paid for | USD | 625,500 | USD | 0 | 0 | "Arising prior to" exclusion | Paras. 34-37. | 44,800 |
|  |  |  |  |  |  | Contract | Goods manufactured but not shipped | USD | 1,536,000 | USD | 44,800 | 44,800 | Deduction for failure to mitigate. | Para. 90. |  |
|  |  |  |  |  |  | Interest | N/A | USD | 540,375 | USD | Awaiting decision | Awaiting decision | Interest on amount awarded is to be determined as per Governing Council decision 16. (Paras. 147-148) |  |  |
| 11 | Egypt | Youssef El Eraky Furniture<br>4005780 | USD | 79,329 | 79,329 | Contract | Goods lost or destroyed in transit | USD | 23,688 | USD | 23,688 | 23,688 | N/A |  | 23,688 |
|  |  |  |  |  |  | Contract | Finance costs | USD | 55,641 | USD | 0 | 0 | All or part of loss is not direct. | Para. 63. |  |
| 12 | France | Claim withdrawn<br>4001842 |  |  |  |  |  |  |  |  |  |  |  |  | N/A |
| 13 | France | Claim withdrawn<br>4001876 |  |  |  |  |  |  |  |  |  |  |  |  | N/A |
| 14 | Germany | DZ Licht Aussenleuchten GmbH & Co. KG.<br>4000348 | DEM | 7,313 | 4,682 | Contract | Goods delivered to Kuwait but not paid for | DEM | 7,313 | DEM | 0 | 0 | No proof of direct loss. | Paras. 51-55. | 0 |

|  | Country | Claimant and UNCC claim No. | Total amount claimed, including permissible amendments a/ |  |  | Reclassified claim d/ |  |  |  | Decision of the Panel of Commissioners e/ |  |  |  |  |  |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
|  |  |  | Amount claimed in original currency b/ |  | Total amount claimed restated in USD c/ | Type of loss | Sub category | Amount claimed in original currency |  | Amount recommended in original currency |  | Amount recommended in USD | Reasons for denial or reduction of award | Report citation | Total award in USD |
| 15 | Germany | Hans Holland GmbH<br>4000349 | DEM | 203,410 | 130,224 | Contract | Goods manufactured but not shipped | DEM | 203,410 | DEM | 160,088 | 100,306 | Part or all of loss is outside compensable period; Deduction for failure to mitigate. | Paras. 81, 88; 90. | 100,306 |
| 16 | Germany | Connex Werbekonzept GmbH (Former BAPO Gesellschaft fur automatisierte Schweiblechnik GmbH)<br>4000355 | DEM | 219,670 | 140,634 | Tangible property | Machinery | DEM | 219,670 | DEM | 0 | 0 | Part or all of loss is unsubstantiated; Failure to comply with formal filing requirements (translation). | Paras. 23-29, 130-132, 28. | 0 |
| 17 | Germany | Ing A. Schmidt GmbH<br>4000481 | DEM | 984,249 | 630,121 | Tangible property | Vehicle / Machinery | DEM | 549,000 | DEM | 300,000 | 187,970 | Calculated loss is less than loss alleged. (The party who has legal title to a portion of the property has another pending claim before the Commission.) | Paras. 14-15, 130. | 187,970 |
|  |  |  |  |  |  | Tangible property | Vehicles / Machinery | SEK | 1,872,040 | SEK | 0 | 0 | No proof of loss. (The party who has legal title to property has another pending claim before the Commission.) | Paras. 14-15, 130. |  |

|  | Country | Claimant and UNCC claim No. | Total amount claimed, including permissible amendments a/ |  |  | Reclassified claim d/ |  |  |  | Decision of the Panel of Commissioners e/ |  |  |  |  |  |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
|  |  |  | Amount claimed in original currency b/ |  | Total amount claimed restated in USD c/ | Type of loss | Sub-category | Amount claimed in original currency |  | Amount recommended in original currency |  | Amount recommended in USD | Reasons for denial or reduction of award | Report citation | Total award in USD |
| 18 | Germany | Oswald Felix Gregor<br>4000492 | DEM | 182,030 | 125,175 | Contract | Goods delivered to Kuwait but not paid for | DEM | 175,814 | DEM | 0 | 0 | Part or all of loss is not direct; | Paras. 51-55; 23-29, 54-55. | 0 |
|  |  |  | CHF | 11,160 |  |  |  | CHF | 11,160 | CHF | 0 | 0 | Part or all of loss is unsubstantiated. |  |  |
|  |  |  |  |  |  | Contract | Goods lost or destroyed in transit | DEM | 6,216 | DEM | 0 | 0 | Part or all of loss is not direct. | Paras. 59-60. |  |
| 19 | Germany | Lubing Maschinenfabrik GmbH & Co. KG.<br>4000530 | DEM | 329,130 | 210,711 | Contract | Goods delivered to Iraq but not paid for | DEM | 329,130 | DEM | 0 | 0 | Part or all of loss is unsubstantiated; Failure to comply with formal filing requirements (translation). | Paras. 23-29, 44-48; 28. | 0 |
| 20 | Germany | Storck International GmbH<br>4000568 | DEM | 45,475 | 29,113 | Contract | Goods delivered to Kuwait but not paid for | DEM | 42,633 | DEM | 0 | 0 | No proof of direct loss. | Paras. 51-55. | 0 |
|  |  |  |  |  |  | Interest | N/A | DEM | 2,845 | DEM | 0 | 0 | Principal sum not compensable. |  |  |

|  | Country | Claimant and UNCC claim No. | Total amount claimed, including permissible amendments a/ |  |  | Reclassified claim d/ |  |  |  | Decision of the Panel of Commissioners e/ |  |  |  |  |  |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
|  |  |  | Amount claimed in original currency b/ |  | Total amount claimed restated in USD c/ | Type of loss | Sub-category | Amount claimed in original currency |  | Amount recommended in original currency |  | Amount recommended in USD | Reasons for denial or reduction of award | Report citation | Total award in USD |
| 21 | Germany | Accumulatorenwerke Hoppecke Carl Zoellner & Sohn GmbH & Co. KG.<br>4000717 | DEM | 26,326 | 16,855 | Contract | Goods delivered to Kuwait but not paid for | DEM | 9,976 | DEM | 0 | 0 | No proof of direct loss. | Paras. 51-55. | 2,201 |
|  |  |  |  |  |  | Contract | Freight costs for diverted goods | DEM | 3,763 | DEM | 3,512 | 2,201 | Part or all of the loss is unsubstantiated. | Paras. 23-29, 68. |  |
|  |  |  |  |  |  | Interest | N/A | DEM | 12,587 | DEM | Awaiting decision | Awaiting decision | Interest on amount awarded is to be determined as per Governing Council decision 16. (Paras. 147-148) |  |  |
| 22 | Germany | Trucktec Automobile Parts Co. Ltd.<br>4000817 | DEM | 73,714 | 47,192 | Contract | Goods lost or destroyed in transit | DEM | 31,225 | DEM | 10,221 | 6,404 | No proof of direct loss. | Paras. 59-61. | 6,404 |
|  |  |  |  |  |  | Contract | Goods shipped but diverted | DEM | 42,489 | DEM | 0 | 0 | Part or all of loss is unsubstantiated. | Paras. 23-29, 68-69. |  |
| 23 | Germany | Dibona Markenvertrieb KG<br>4000894 | DEM | 136,951 | 87,676 | Contract | Goods lost or destroyed in transit | DEM | 136,951 | DEM | 13,695 | 8,581 | No proof of loss (for a portion of the claim claimant was paid by insurer which has a pending claim before the Commission). | Para. 15. | 8,581 |

|  | Country | Claimant and UNCC claim No. | Total amount claimed, including permissible amendments a/ |  |  | Reclassified claim d/ |  |  |  | Decision of the Panel of Commissioners e/ |  |  |  |  |  |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
|  |  |  | Amount claimed in original currency b/ |  | Total amount claimed restated in USD c/ | Type of loss | Sub-category | Amount claimed in original currency |  | Amount recommended in original currency |  | Amount recommended in USD | Reasons for denial or reduction of award | Report citation | Total award in USD |
| 24 | Hungary | Vav Switchgear Company<br>4000279 | KWD | 528,405 | 1,828,391 | Contract | Interrupted contract (loss of profit) | KWD | 205,962 | KWD | 0 | 0 | Part or all of loss is unsubstantiated. | Paras. 23-29, 87. | 0 |
|  |  |  |  |  |  |  |  | HUF | 31,317,647 | HUF | 0 | 0 |  |  |  |
|  |  |  |  |  |  | Tangible property | Not determinable | KWD | 37,490 | KWD | 0 | 0 | Part or all of loss is unsubstantiated; Failure to comply with formal filing requirements (translation). | Paras. 23-29, 130-132; 28. |  |
|  |  |  |  |  |  | Interest | N/A | KWD | 139,371 | KWD | 0 | 0 | Principal sum not compensable. |  |  |
| 25 | India | Auto International (India)<br>4000650 | USD | 939,665 | 939,665 | Contract | Goods delivered to Iraq but not paid for | USD | 619,066 | USD | 0 | 0 | Arising prior to exclusion;<br>Part or all of the loss is outside compensable period. | Paras. 34-37; 42. | 0 |
|  |  |  |  |  |  | Interest | N/A | USD | 320,599 | USD | 0 | 0 | Principal sum not compensable. |  |  |

| | Country | Claimant and UNCC claim No. | Total amount claimed, including permissible amendments a/ | | | Reclassified claim d/ | | | | Decision of the Panel of Commissioners e/ | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Amount claimed in original currency b/ | | Total amount claimed restated in USD c/ | Type of loss | Sub category | Amount claimed in original currency | | Amount recommended in original currency | | Amount recommended in USD | Reasons for denial or reduction of award | Report citation | Total award in USD |
| 26 | India | Rustom Mills & Industries Limited<br>4000674 | USD | 6,267 | 6,267 | Tangible property | Textiles | USD | 5,697 | USD | 2,848 | 2,848 | Calculated loss is less than loss alleged. (In light of prior existing dispute between parties, loss was calculated on the basis of estimated resale value of goods.) | Para. 132 | 2,848 |
| | | | | | | Interest | N/A | USD | 570 | USD | Awaiting decision | Awaiting decision | Interest on amount awarded is to be determined as per Governing Council decision 16. (Paras. 147-148) | | |
| 27 | India | Surat Diamond Industries Ltd<br>4000679 | USD | 12,250 | 12,250 | Contract | Finance costs | USD | 12,250 | USD | 0 | 0 | Part or all of the loss is not direct. | Para. 86 | 0 |
| 28 | India | The Tata Iron and Steel Company Limited<br>4000680 | INR | 9,159,452 | 519,626 | Contract | Goods delivered to Iraq but not paid for | INR | 8,674,434 | USD | 0 | 0 | "Arising prior to" exclusion. | Paras. 34-37. | 0 |
| | | | | | | Contract | Finance costs | INR | 485,018 | USD | 0 | 0 | Part or all of loss is not direct. | Para. 43. | |
| 29 | India | The Decorative Laminates (India) Pvt Ltd<br>4000783 | USD | 762,556 | 762,556 | Contract | Goods delivered to Iraq but not paid for | USD | 420,856 | USD | 0 | 0 | "Arising prior to" exclusion. | Paras. 34-37. | 0 |
| | | | | | | Interest | N/A | USD | 341,700 | USD | 0 | 0 | Principal sum is not compensable. | | |

|  |  |  | Total amount claimed, including permissible amendments a/ |  |  | Reclassified claim d/ |  |  |  | Decision of the Panel of Commissioners e/ |  |  |  |  |  |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
|  | Country | Claimant and UNCC claim No. | Amount claimed in original currency b/ |  | Total amount claimed restated in USD c/ | Type of loss | Sub-category | Amount claimed in original currency |  | Amount recommended in original currency |  | Amount recommended in USD | Reasons for denial or reduction of award | Report citation | Total award in USD |
| 30 | Iran | Iran Marine Industrial Company (IMICO)<br>4001341 | IRR | 14,400,000 | 392,204 | Business loss or course of dealing | Increased costs (transportation and war risk insurance) | IRR | 14,400,000 | IRR | 0 | 0 | Part or all of loss is unsubstantiated; Failure to comply with formal filing requirements (translation). | Paras. 23-29, 125-126; 28. | 0 |
|  |  |  | USD | 175,000 |  | Business loss or course of dealing | Increased costs (raw materials) | USD | 175,000 | USD | 0 | 0 |  |  |  |
| 31 | Israel | Naom Productions Limited<br>4000314 | ILS | 12,309 | 6,025 | Business loss or course of dealing | Decline in business | ILS | 8,087 | ILS | 0 | 0 | No proof of direct loss; Part or all of loss is unsubstantiated. | Paras. 93-101; 23-29, 107-108. | 0 |
|  |  |  |  |  |  | Interest | N/A | ILS | 4,222 | ILS | 0 | 0 | Principal sum is not compensable. |  |  |
| 32 | Israel | Fertilizers & Chemicals Ltd.<br>4000433 | USD | 572,000 | 572,000 | Business loss or course of dealing | Increased costs | USD | 572,000 | USD | 0 | 0 | Part or all of loss is unsubstantiated. | Paras. 23-29, 126. | 0 |
| 33 | Italy | Renato Piralla Spa<br>4001055 | ITL | 22,096,500 | 19,060 | Contract | Goods lost or destroyed in transit | ITL | 22,096,500 | ITL | 22,096,500 | 18,928 | N/A |  | 18,928 |

|  | Country | Claimant and UNCC claim No. | Total amount claimed, including permissible amendments a/ |  |  | Reclassified claim d/ |  |  |  | Decision of the Panel of Commissioners e/ |  |  |  |  |  |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
|  |  |  | Amount claimed in original currency b/ |  | Total amount claimed restated in USD c/ | Type of loss | Sub-category | Amount claimed in original currency |  | Amount recommended in original currency |  | Amount recommended in USD | Reasons for denial or reduction of award | Report citation | Total award in USD |
| 34 | Italy | Byblos S.P.A.<br>4001077 | ITL | 242,093,016 | 208,827 | Contract | Goods delivered to Kuwait but not paid for | ITL | 62,930,795 | ITL | 0 | 0 | Part or all of the loss is unsubstantiated. | Paras. 23-29, 51-55. | 0 |
|  |  |  |  |  |  | Contract | Goods manufactured for sale to Kuwait and other countries but not shipped | ITL | 179,162,221 | ITL | 0 | 0 | Part or all of loss is not direct;<br>Deduction for failure to mitigate;<br>No proof of loss | Paras. 83;<br>80, 90;<br>27. |  |
| 35 | Italy | Linea G. Salotti di Grossi Clemente & C. snc.<br>4001267 | ITL | 205,035,000 | 176,861 | Contract | Goods delivered to Kuwait and the UAE but not paid for | ITL | 69,390,000 | ITL | 0 | 0 | Part or all of loss is not direct;<br>Part or all of loss is unsubstantiated;<br>No proof of direct loss. | Paras. 80, 83;<br>23-29, 54;<br>51-55. | 0 |
|  |  |  |  |  |  | Contract | Goods shipped but diverted | ITL | 37,560,000 | ITL | 0 | 0 | Part or all of loss is unsubstantiated. | Paras. 23-29, 68-69. |  |
|  |  |  |  |  |  | Tangible property | Furniture | ITL | 98,085,000 | ITL | 0 | 0 | Part or all of loss is unsubstantiated. | Paras. 23-29, 130-132. |  |

| | Country | Claimant and UNCC claim No. | Total amount claimed, including permissible amendments a/ | | | Reclassified claim d/ | | | | Decision of the Panel of Commissioners e/ | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Amount claimed in original currency b/ | | Total amount claimed restated in USD c/ | Type of loss | Sub-category | Amount claimed in original currency | | Amount recommended in original currency | | Amount recommended in USD | Reasons for denial or reduction of award | Report citation | Total award in USD |
| 36 | Italy | Societa per Azioni Termomeccanica Italiana Spa<br>4001275 | ITL | 4,670,947,000 | 4,029,110 | Contract | Interrupted contract | ITL | 4,670,947,000 | ITL | 0 | 0 | Part or all of the loss is unsubstantiated; Failure to comply with formal filing requirements (translation, statement of claim). | Paras. 23-29, 87;<br>23, 28; | 0 |
| 37 | Italy | General Filter Srl<br>4001277 | ITL | 28,215,806 | 24,339 | Contract | Goods shipped but diverted | ITL | 28,215,806 | ITL | 3,215,806 | 2,755 | Deduction for failure to mitigate. | Para. 68. | 2,755 |
| 38 | Italy | Danieli & C. Officine Meccaniche S.P.A.<br>4001288 | DEM | 150,449,400 | 96,318,438 | Contract | Interrupted contract | DEM | 150,449 400 | DEM | 0 | 0 | Part or all of loss is unsubstantiated; Failure to comply with formal filing requirements (translation). | Paras. 23-29, 87; 28. | 0 |
| 39 | Japan | Matsushita Electric Industrial Co. LTD.<br>4000947 | USD | 338,381 | 338,381 | Tangible property | Vehicles, office furniture and equipment | USD | 43,981 | USD | 0 | 0 | Part or all of loss is unsubstantiated; No proof of loss. | Paras. 23-29, 130-132; 27. | 0 |
| | | | | | | Payment or relief to others | Personal property reimbursement | JPY | 36,800,000 | JPY | 0 | 0 | Part or all of loss is unsubstantiated. | Paras. 23-29, 117-118. | |

| | Country | Claimant and UNCC claim No. | Total amount claimed, including permissible amendments a/ | | | Reclassified claim d/ | | | | Decision of the Panel of Commissioners e/ | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Amount claimed in original currency b/ | | Total amount claimed restated in USD c/ | Type of loss | Sub category | Amount claimed in original currency | | Amount recommended in original currency | | Amount recommended in USD | Reasons for denial or reduction of award | Report citation | Total aw rd in USD |
| 40 | Japan | Taiyo Electric Co. Ltd.<br>4000949 | USD | 6,874 | 6,874 | Tangible property | Vehicle | JPY | 259,963 | JPY | 259,963 | 1,764 | N/A | | 1,764 |
| | | | | | | Tangible property | Cash | USD | 4,827 | USD | 0 | 0 | No proof of loss. | Paras. 27, 130. | |
| 41 | Japan | Ishii Iron Works Co. Ltd.<br>4000965 | JPY | 1,185,559,680 | 8,218,785 | Contract | Interrupted contract (goods lost or destroyed in transit) | JPY | 868,444,790 | JPY | 434,222,395 | 2,946,878 | Deduction for failure to mitigate. | Para. 90 | 4,267,644 |
| | | | | | | Business loss or course of dealing | Increased costs (labour costs and contract cancellation fees) | JPY | 317,114,890 | JPY | 194,614,890 | 1,320,766 | No proof of loss;<br>Part or all of loss is unsubstantiated. | Paras. 125; 23-29, 87. | |
| 42 | Malaysia | Ansell Malaysia SDN BHD<br>4001376 | USD | 79,608 | 79,608 | Contract | Goods delivered to Iraq but not paid for | USD | 79,608 | USD | 46,128 | 46,128 | "Arising prior to" exclusion. | Paras. 34-37. | 46,128 |
| 43 | Netherlands | Denka International B.V.<br>4001390 | NLG | 381,619 | 216,706 | Business loss or course of dealing | Course of dealing | NLG | 293,705 | NLG | 0 | 0 | Part or all of loss is unsubstantiated. | Paras. 23-29, 101-103, 107. | 0 |
| | | | | | | Claim preparation costs | Consultancy fee | NLG | 4,950 | NLG | 0 | 0 | Principal sum is not compensable. | | |
| | | | | | | Interest | N/A | NLG | 82,964 | NLG | 0 | 0 | Principal sum is not compensable. | | |

| | Country | Claimant and UNCC claim No. | Total amount claimed, including permissible amendments a/ | | | Reclassified claim d/ | | | | Decision of the Panel of Commissioners e/ | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Amount claimed in original currency b/ | | Total amount claimed restated in USD c/ | Type of loss | Sub-category | Amount claimed in original currency | | Amount recommended in original currency | | Amount recommended in USD | Reasons for denial or reduction of award | Report citation | Total award in USD |
| 44 | Netherlands | Driessen Aircraft Interior Systems (Europe) BV.<br>4001413 | NLG | 761,765 | 432,575 | Contract | Goods delivered to Iraq but not paid for | NLG | 761,765 | NLG | 0 | 0 | "Arising prior to" exclusion. | Paras. 34-37. | 0 |
| 45 | Netherlands | W.G. Agencies B.V.<br>4001535 | NLG | 418,299 | 237,535 | Business loss or course of dealing | Course of dealing | NLG | 292,654 | NLG | 0 | 0 | Part or all of loss is not direct. | Paras. 93-98, 102-104. | 0 |
| | | | | | | Business loss or course of dealing | Increased costs (unproductive salaries) | NLG | 65,237 | NLG | 0 | 0 | Part or all of loss is not direct. | Para. 113. | |
| | | | | | | Interest | N/A | NLG | 60,408 | NLG | 0 | 0 | Principal sum is not compensable. | | |
| 46 | Netherlands | Run Mate Instruments B.V.<br>4001539 | USD | 180,000 | 180,000 | Contract | Interrupted contract (Loss of profit) | USD | 18,000 | USD | 0 | 0 | Part or all of loss is not direct. | Para. 82. | 0 |
| | | | | | | Business loss or course of dealing | Course of dealing | USD | 162,000 | USD | 0 | 0 | Part or all of loss is not direct. | Paras. 93-98, 102-104. | |
| 47 | Portugal | Bento Ferreira-Industrias Texteis/SA<br>4001224 | USD | 23,082 | 23,082 | Contract | Goods manufactured but not shipped | USD | 15,178 | USD | 10,000 | 10,000 | Deduction for failure to mitigate. | Para. 90. | 10,000 |
| | | | | | | Interest | N/A | USD | 7,904 | USD | Awaiting decision | Awaiting decision | Interest on amount awarded is to be determined as per Governing Council decision 16. (Paras. 147-148) | | |

| | Country | Claimant and UNCC claim No. | Total amount claimed, including permissible amendments a/ | | | Reclassified claim d/ | | | | Decision of the Panel of Commissioners e/ | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Amount claimed in original currency b/ | | Total amount claimed restated in USD c/ | Type of loss | Sub category | Amount claimed in original currency | | Amount recommended in original currency | | Amount recommended in USD | Reasons for denial or reduction of award | Report citation | Total award in USD |
| 48 | Portugal | Ceancarel - Alta Moda em Marroquinaria Lda.<br>4001232 | USD | 39,713 | 39,713 | Contract | Goods manufactured but not delivered to Saudia Arabia | USD | 24,628 | USD | 0 | 0 | Part or all of loss is not direct. | Para. 83. | 0 |
| | | | | | | Interest | N/A | USD | 15,085 | USD | 0 | 0 | Principal sum not compensable. | | |
| 49 | Portugal | Sterling Winthrop Produtos Farmaceuticos LDA.<br>4001234 | PTE | 84,985,355 | 615,372 | Contract | Goods delivered to Iraq, Kuwait and Oman but not paid for | GBP | 185,000 | GBP/ USD | 0 | 0 | "Arising prior to" exclusion; No proof of direct loss; Part or all of loss is not direct. | Paras. 34-37; 51-55; 83 | 0 |
| | | | | | | | | USD | 28,325 | | | | | | |
| | | | | | | Interest | N/A | GBP | 112,944 | GBP | 0 | 0 | Principal sum is not compensable. | | |
| | | | | | | | | USD | 10,190 | USD | 0 | 0 | | | |
| 50 | Republic of Korea | Shin Han Cast Iron Co. Ltd<br>4001119 | USD | 3,213,290 | 3,213,290 | Contract | Goods delivered to Iraq but not paid for | USD | 2,374,036 | USD | 0 | 0 | "Arising prior to" exclusion. | Paras. 34-38. | 0 |
| | | | | | | Interest | N/A | USD | 839,254 | USD | 0 | 0 | Principal sum is not compensable. | | |

| | Country | Claimant and UNCC claim No. | Total amount claimed, including permissible amendments a/ | | | Reclassified claim d/ | | | | Decision of the Panel of Commissioners e/ | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Amount claimed in original currency b/ | | Total amount claimed restated in USD c/ | Type of loss | Sub-category | Amount claimed in original currency | | Amount recommended in original currency | | Amount recommended in USD | Reasons for denial or reduction of award | Report citation | Total award in USD |
| 51 | Romania | Industrialexport S.A<br>4001255 | USD | 11,288,794 | 11,288,794 | Contract | Goods delivered to Iraq but not paid for | USD | 2,811,194 | USD | 0 | 0 | "Arising prior to" exclusion | Paras. 34-37. | 0 |
| | | | | | | Contract | Interrupted contract (Loss of profit) | USD | 8,000,000 | USD | 0 | 0 | Part or all of the loss is unsubstantiated. | Paras. 23-29, 87 | |
| | | | | | | Payment or relief to others | Evacuation costs | USD | 183,107 | USD | 0 | 0 | Part or all of loss is unsubstantiated | Paras. 23-29, 122. | |
| | | | | | | Interest | N/A | USD | 294,493 | USD | 0 | 0 | Principal sum is not compensable. | | |
| 52 | Saudi Arabia | Belleli Saudi Heavy Industries Ltd. and Belleli Saudi Arabia Limited<br>4002436 | SAR | 24,819,347 | [illegible],627,329 | Payment or relief to others; Other costs | Increased costs (incentives, bonus payments and unproductive salaries, evacuation and other costs) | SAR | 24,819,347 | SAR | 2,032,168 | 542,635 | No proof of loss;<br>Part or all of loss is not direct;<br>Part or all of loss is unsubstantiated. | Paras. 117-118, 122;<br>125;<br>23-29, 122, 126 | 542,635 |

|  | Country | Claimant and UNCC claim No. | Total amount claimed, including permissible amendments a/ |  |  | Reclassified claim d/ |  |  |  | Decision of the Panel of Commissioners e/ |  |  |  |  |  |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
|  |  |  | Amount claimed in original currency b/ |  | Total amount claimed restated in USD c/ | Type of loss | Sub-category | Amount claimed in original currency |  | Amount recommended in original currency |  | Amount recommended in USD | Reasons for denial or reduction of award | Report citation | Total aw'rd in USD |
| 53 | Saudi Arabia | Al Kawther Industries Ltd.<br>4002453 | USD | 632,580 | 632,580 | Contract | Goods delivered to Iraq but not paid for | USD | 461,537 | USD | 0 | 0 | "Arising prior to" exclusion. | Paras. 34-37. | 0 |
|  |  |  |  |  |  | Contract | Loss of profit | USD | 26,527 | USD | 0 | 0 | Part or all of loss is not direct (contract was interrupted by the buyer's non-payment for earlier shipments and not due to Iraq's invasion and occupation of Kuwait). | Para. 79 |  |
|  |  |  |  |  |  | Interest | N/A | USD | 144,516 | USD | 0 | 0 | Principal sum is not compensable. |  |  |

|  | Country | Claimant and UNCC claim No. | Total amount claimed, including permissible amendments a/ |  |  | Reclassified claim d/ |  |  |  | Decision of the Panel of Commissioners e/ |  |  |  |  |  |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
|  |  |  | Amount claimed in original currency b/ |  | Total amount claimed restated in USD c/ | Type of loss | Sub-category | Amount claimed in original currency |  | Amount recommended in original currency |  | Amount recommended in USD | Reasons for denial or reduction of award | Report citation | Total award in USD |
| 54 | Saudi Arabia | Abdulaziz & Mohammed A. Aljomaih Co.<br>4002463 | SAR | 2,223,951 | 593,845 | Business loss or course of dealing | Increased costs (incentives and bonus payments, war risk insurance, freight costs and other costs) | SAR | 2,207,751 | SAR | 121,848 | 32,536 | Part or all of loss is unsubstantiated;<br>Part or all of loss is outside compensable area;<br>Failure to comply with formal filing requirements (translation);<br>No proof of loss;<br>No proof of direct loss (no proof that post invasion factory closure was a direct result of the invasion and occupation). | Paras.<br>23-29,<br>117, 27,<br>126; 97,<br>125;<br>28;<br>126;<br>97, 99<br>100 | 32,536 |
|  |  |  |  |  |  | Claim preparation costs | N/A | SAR | 16,200 | SAR | Awaiting decision | Awaiting decision | To be resolved by Governing Council. (Para 149) |  |  |
| 55 | Saudi Arabia | Saudi Shinwha Company Ltd.<br>4002474 | USD | 681,977 | 681,977 | Payment or relief to others | Evacuation costs | USD | 681,977 | USD | 0 | 0 | No proof of direct loss;<br>Part or all of the loss is unsubstantiated. | Paras.<br>121;<br>23-29,<br>122. | 0 |

| | Country | Claimant and UNCC claim No. | Total amount claimed, including permissible amendments a/ | | | Reclassified claim d/ | | | | Decision of the Panel of Commissioners e/ | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Amount claimed in original currency b/ | | Total amount claimed restated in USD c/ | Type of loss | Sub-category | Amount claimed in original currency | | Amount recommended in original currency | | Amount recommended in USD | Reasons for denial or reduction of award | Report citation | Total award in USD |
| 56 | Saudi Arabia | Saudi Kuwaiti Cement Manufacturing Company<br>4002836 | SAR | 128,903,118 | 34,420,058 | Contract | Interrupted contract (contract price) | SAR | 112,500,000 | SAR | 0 | 0 | Part or all of loss is unsubstantiated; No proof of loss. | Paras. 23-29, 87; 27, 80. | 0 |
| | | | | | | Business loss or course of dealing | Decline in business | SAR | 13,817,756 | SAR | 0 | 0 | Part or all of loss is unsubstantiated(insufficient evidence of value). | Paras. 23-29, 107; 108. | |
| | | | | | | Interest | N/A | SAR | 2,585,362 | SAR | 0 | 0 | Principal sum not compensable. | | |
| 57 | Spain | Zayer SA<br>4001574 | ESP | 15,931,784 | 163,655 | Contract | Goods manufactured but not shipped | ESP | 15,931,784 | ESP | 15,931,784 | 161,964 | N/A | | 161,964 |
| 58 | Spain | Teka Industrial S.A.<br>4001577 | ESP | 367,221,992 | 3,772,183 | Contract | Goods delivered to Iraq but not paid for | ESP | 239,322,018 | ESP | 0 | 0 | "Arising prior to" exclusion. | Paras. 34-37. | 0 |
| | | | | | | Interest | N/A | ESP | 127,899,974 | ESP | 0 | 0 | Principal sum not compensable. | | |
| 59 | Spain | Walthon Weir Pacific S.A.<br>4001579 | ESP | 26,234,031 | 269,482 | Contract | Interrupted contract (costs incurred) | ESP | 26,234,031 | ESP | 0 | 0 | No proof of loss. | Para. 27 | 0 |

|  | Country | Claimant and UNCC claim No. | Total amount claimed, including permissible amendments a/ |  |  | Reclassified claim d/ |  |  |  | Decision of the Panel of Commissioners e/ |  |  |  |  |  |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
|  |  |  | Amount claimed in original currency b/ |  | Total amount claimed restated in USD c/ | Type of loss | Sub-category | Amount claimed in original currency |  | Amount recommended in original currency |  | Amount recommended in USD | Reasons for denial or reduction of award | Report citation | Total award in USD |
| 60 | Spain | Cenavisa S A<br>4001588 | USD | 8,146,190 | 8,146,190 | Contract | Goods delivered to Iraq but not paid for | USD | 6,768,270 | USD | 145,852 | 145,852 | "Arising prior to" exclusion;<br>No proof of loss (returned shipments). | Paras. 34 37;<br>27. | 145,852 |
|  |  |  |  |  |  | Interest | N/A | USD | 1,377,920 | USD | Awaiting decision | Awaiting decision | Interest on amount awarded is to be determined as per Governing Council decision 16. (Paras. 147 148) |  |  |
| 61 | Spain | Azu vi S A.<br>4001590 | USD | 119,931 | 119,931 | Contract | Goods delivered to Kuwait but not paid for | USD | 119,931 | USD | 0 | 0 | No proof of direct loss. | Paras. 51 55. | 0 |
| 62 | Switzerland | Therma Grosskuchen AG<br>4001513 | CHF | 679,023 | 525,560 | Contract | Goods shipped but diverted | CHF | 602,560 | CHF | 49,088 | 36,254 | Part or all of loss is unsubstantiated. | Paras. 23 29, 68 69. | 36,254 |
|  |  |  |  |  |  | Contract | Goods manufactured but not shipped | CHF | 40,859 | CHF | 0 | 0 | No proof of loss;<br>Part or all of loss is unsubstantiated. | Paras. 27, 87, 90;<br>23 29, 90. |  |
|  |  |  |  |  |  | Contract | Increased costs (storage costs) | CHF | 35,604 | CHF | 0 | 0 | No proof of loss. | Paras. 27, 126. |  |
| 63 | Thailand | General Sox Co Ltd<br>4001484 | USD | 18,868 | 30,916 | Contract | Goods lost or destroyed in transit | USD | 18,868 | USD | 18,868 | 18,868 | N/A |  | 18,868 |
|  |  |  | THB | 306,980 |  | Contract | Finance costs | THB | 306,980 | THB | 0 | 0 | All or part of loss is not direct. | Para. 63. |  |

|  | Country | Claimant and UNCC claim No. | Total amount claimed, including permissible amendments a/ |  |  | Reclassified claim d/ |  |  |  | Decision of the Panel of Commissioners e/ |  |  |  |  |  |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
|  |  |  | Amount claimed in original currency b/ |  | Total amount claimed restated in USD c/ | Type of loss | Sub-category | Amount claimed in original currency |  | Amount recommended in original currency |  | Amount recommended in USD | Reasons for denial or reduction of award | Report citation | Total aw rd in USD |
| 64 | FYR Macedonia | Socially owned Enterprise for the Production of Yarns "Politeks" - Prilep<br>4001675 | USD | 942,678 | 942,678 | Contract | Goods delivered to Iraq but not paid for | USD | 746,691 | USD | 0 | 0 | "Arising prior to" exclusion. | Paras. 34-37. | 0 |
|  |  |  |  |  |  | Interest | N/A | USD | 195,987 | USD | 0 | 0 | Principal sum is not compensable. |  |  |
| 65 | FYR Macedonia | Lead and Zinc Mines "SASA"<br>4001676 | USD | 3,386,422 | 3,386,422 | Contract | Goods delivered to Iraq but not paid for | USD | 830,048 | USD | 0 | 0 | "Arising prior to" exclusion; Part or all of loss is outside compensable period. | Paras. 34-37; 42. | 0 |
|  |  |  |  |  |  | Contract | Goods partially manufactured | USD | 2,395,550 | USD | 0 | 0 | Part or all of loss is unsubstantiated. | Paras. 23-29, 87. |  |
|  |  |  |  |  |  | Interest | N/A | USD | 160,824 | USD | 0 | 0 | Principal sum is not compensable. |  |  |
| 66 | FYR Macedonia | MZT DOO PO Skopje<br>4001677 | USD | 990,193 | 990,193 | Contract | Goods delivered to Kuwait and to Croatia | USD | 990,193 | USD | 0 | 0 | No proof of direct loss; Part or all of the loss is not direct. | Paras. 51-55; 83. | 0 |
| 67 | FYR Macedonia | Organic Chemical Industry "Naum Naumovski Borce"<br>4001678 | USD | 3,558,084 | 3,558,084 | Contract | Goods delivered to Iraq but not paid for | USD | 2,948,580 | USD | 0 | 0 | "Arising prior to" exclusion. | Paras. 34-37. | 0 |
|  |  |  |  |  |  | Interest | N/A | USD | 609,504 | USD | 0 | 0 | Principal sum is not compensable. |  |  |

| | Country | Claimant and UNCC claim No. | Total amount claimed, including permissible amendments a/ | | | Reclassified claim d/ | | | | Decision of the Panel of Commissioners e/ | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Amount claimed in original currency b/ | | Total amount claimed restated in USD c/ | Type of loss | Sub category | Amount claimed in original currency | | Amount recommended in original currency | | Amount recommended in USD | Reasons for denial or reduction of award | Report citation | Total award in USD |
| 68 | Turkey | Anadolu Cam Sanayii A.S.<br>4001635 | USD | 841,778 | 841,778 | Contract | Goods shipped but diverted | USD | 765,589 | USD | 424,056 | 424,056 | Calculated loss is less than loss alleged. | Paras. 68 69. | 424,056 |
| | | | | | | Contract | Increased costs | USD | 76,189 | USD | 0 | 0 | Part or all of the loss is unsubstantiated. No proof of loss. | Paras. 23 29, 125 126; 27 | |
| 69 | Turkey | Oztiryakiler Madeni Esya Sanayi ve Ticaret A.S.<br>4001702 | USD | 3,456,956 | 3,456,957 | Contract | Goods delivered to Iraq but not paid for | USD | 2,820,000 | USD | 0 | 0 | "Arising prior to" exclusion. | Paras 34 37 | 0 |
| | | | | | | Interest | N/A | USD | 636,956 | USD | 0 | 0 | Principal sum is not compensable. | | |
| 70 | Turkey | Egeplast EGE Plastik Ticaret ve Sanayii A.S.<br>4001703 | USD | 2,174,661 | 2,174,661 | Contract | Goods delivered to Iraq but not paid for | USD | 1,542,239 | USD | 385,745 | 385,745 | "Arising prior to" exclusion. | Paras 34-37. | 385,745 |
| | | | | | | Interest | N/A | USD | 632,422 | USD | Awaiting decision | Awaiting decision | Interest on amount awarded is to be determined as per Governing Council decision 16. (Paras. 147 148) | | |
| 71 | Turkey | Soydan Tarim Sanayi Ve Ticaret A.S.<br>4001713 | USD | 1,140,794 | 1,140,794 | Contract | Goods delivered to Iraq but not paid for | USD | 945,000 | USD | 0 | 0 | Trade embargo is the sole cause. | Para. 41. | 0 |
| | | | | | | Interest | N/A | USD | 195,794 | USD | 0 | 0 | Principal sum is not compensable. | | |

| | Country | Claimant and UNCC claim No. | Total amount claimed, including permissible amendments a/ | | | Reclassified claim d/ | | | | Decision of the Panel of Commissioners e/ | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Amount claimed in original currency b/ | | Total amount claimed restated in USD c/ | Type of loss | Sub category | Amount claimed in original currency | | Amount recommended in original currency | | Amount recommended in USD | Reasons for denial or reduction of award | Report citation | Total award in USD |
| 72 | United Arab Emirates | Serck Services (Gulf) Limited<br>4001665 | AED | 495,275 | 134,916 | Contract | Goods lost or destroyed in transit | AED | 337,945 | AED | 337,945 | 92,058 | N/A | | 92,058 |
| | | | | | | Business loss or course of dealing | Course of dealing | AED | 157,333 | AED | 0 | 0 | Part or all of loss is unsubstantiated | Paras 23 29, 102 103, 107 108 | |
| 73 | United Arab Emirates | Terrazzo Inc<br>4001776 | KWD | 316,631 | 1,095,609 | Contract | Goods delivered to Kuwait but not paid for | KWD | 27,356 | KWD | 0 | 0 | No proof of direct loss.<br>Part or all of loss is unsubstantiated | Paras 51 55; 23 29, 54 56 | 119,858 |
| | | | | | | Business loss or course of dealing | Decline in business | AED | 1,404,721 | AED | 440,000 | 119,858 | Calculated loss is less than loss alleged. | Para 108 | |
| | | | | | | Business loss or course of dealing | Cost of unused equipment, Research and development | AED | 1,435,000 | AED | 0 | 0 | No proof of loss;<br>Part or all of loss is unsubstantiated | Paras 27, 23 29 | |
| | | | | | | Tangible property | Vehicles and furniture | AED | 261,423 | AED | 0 | 0 | Part or all of loss is unsubstantiated | Paras 23 29, 130 132 | |
| | | | | | | Payment or relief to others | Evacuation, reimbursement for personal property, support | AED | 200,000 | AED | 0 | 0 | Part or all of loss is unsubstantiated | Paras 23 29, 117 118, 122 | |
| | | | | | | Interest | N/A | KWD | 18,670 | KWD | Awaiting decision | Awaiting decision | Interest on amount awarded is to be determined as per Governing Council decision 16. (Paras 147 148) | | |

| | Country | Claimant and UNCC claim No. | Total amount claimed, including permissible amendments a/ | | | Reclassified claim d/ | | | | Decision of the Panel of Commissioners e/ | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Amount claimed in original currency | | Total amount claimed restated in USD c/ | Type of loss | Sub category | Amount claimed in original currency | | Amount recommended in original currency | | Amount recommended in USD | Reasons for denial or reduction of award | Report citation | Total award in USD |
| 74 | United Kingdom | Hydroponic Machines Ltd.<br>4001796 | USD | 761,000 | 761,000 | Business loss or course of dealing | Course of dealing | USD | 750,000 | USD | 0 | 0 | No proof of loss. | Paras. 102-104. | 0 |
| | | | | | | Business loss or course of dealing | Increased costs (travel costs) | USD | 11,000 | USD | 0 | 0 | Part or all of loss is unsubstantiated. | Paras. 23-29. | |
| 75 | United Kingdom | Rothmans International Tobacco (UK) Limited<br>4001854 | GBP | 6,801,634 | 12,930,863 | Business loss or course of dealing | Decline in business | GBP | 6,641,000 | GBP | 574,656 | 1,105,108 | No proof of direct loss. (The nature of the goods was such that they could readily have been sold in other markets.) | Para. 108. | 1,308,664 |
| | | | | | | Business loss or course of dealing | Cancelled operations | GBP | 65,837 | GBP | 65,837 | 121,920 | N/A | | |
| | | | | | | Tangible property | Vehicles, plant and equipment | GBP<br>KWD | 52,591<br>21,792 | GBP<br>KWD | 26,295<br>9,520 | 81,636 | Calculated loss is less than the loss alleged. | Paras. 131-132. | |
| 76 | United Kingdom | Agropharm Ltd<br>4001858 | GBP | 512,085 | 973,546 | Contract | Costs incurred | GBP | 512,085 | GBP | 0 | 0 | Part or all of loss is unsubstantiated; Deduction for failure to mitigate. | Paras 23-29, 87; 90. | 0 |
| | | | | | | Interest | N/A | GBP | Not specified | GBP | 0 | 0 | Principal sum not compensable. | | |

| | Country | Claimant and UNCC claim No. | Total amount claimed, including permissible amendments a/ | | | Reclassified claim d/ | | | | Decision of the Panel of Commissioners e/ | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Amount claimed in original currency b/ | | Total amount claimed restated in USD c/ | Type of loss | Sub category | Amount claimed in original currency | | Amount recommended in original currency | | Amount recommended in USD | Reasons for denial or reduction of award | Report citation | Total award in USD |
| 77 | United Kingdom | The G.B. Clothing Company Limited<br>4001886 | GBP | 43,639 | 82,964 | Contract | Goods delivered to Kuwait but not paid for | GBP | 38,756 | GBP | 0 | 0 | No proof of direct loss. | Paras. 51-55. | 0 |
| | | | | | | Business loss or course of dealing | Course of dealing | GBP | 4,883 | GBP | 0 | 0 | Part or all of loss is not direct. | Paras. 102-103, 107 | |
| 78 | United Kingdom | Ault & Wiborg International Limited<br>4001888 | GBP | 5,159 | 9,808 | Contract | Goods shipped but diverted | GBP | 5,159 | GBP | 3,090 | 5,722 | Part or all of loss is unsubstantiated | Paras. 23-29, 68-69. | 5,722 |
| 79 | United Kingdom | British Steel Tubes Exports Ltd.<br>4001892 | GBP | 8,485 | 16,130 | Contract | Goods shipped but diverted | AED | 15,938 | AED | 5,638 | 1,536 | Part or all of loss is unsubstantiated | Paras. 23-29, 68-69. | 6,858 |
| | | | | | | | | GBP | 5,749 | GBP | 2,874 | 5,322 | | | |

| | Country | Claimant and UNCC claim No. | Total amount claimed, including permissible amendments a/ | | | Reclassified claim d/ | | | | Decision of the Panel of Commissioners e/ | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Amount claimed in original currency b/ | | Total amount claimed restated in USD c/ | Type of loss | Sub-category | Amount claimed in original currency | | Amount recommended in original currency | | Amount recommended in USD | Reasons for denial or reduction of award | Report citation | Total award in USD |
| 80 | United Kingdom | BSA Tools Limited<br>4001913 | GBP | 1,246,797 | 2,370,337 | Contract | Goods delivered to Iraq but not paid for | GBP | 34,163 | GBP | 0 | 0 | No proof of loss. (The claim is based upon an expected loss that has not yet materialised.) | Para. 27. | 177,980 |
| | | | | | | Contract | Interrupted contract (Loss of profit) | GBP | 1,020,417 | GBP | 0 | 0 | No proof of loss. (The claim is based upon an expected loss that has not yet materialised). | Para. 27. | |
| | | | | | | Tangible property | Machinery | GBP | 192,217 | GBP | 96,109 | 177,980 | Part or all of the loss is unsubstantiated; Calculated loss is less than loss alleged. | Paras. 23 29, 130 132. | |
| 81 | United Kingdom | Graham Johnson Limited<br>4001916 | GBP | 27,095 | 51,512 | Contract | Interrupted contract (Costs incurred) | GBP | 14,895 | GBP | 0 | 0 | No proof of loss;<br>Part or all of loss is unsubstantiated | Paras. 27; 23-29, 87. | 0 |
| | | | | | | Tangible property | Equipment | GBP | 12,200 | GBP | 0 | 0 | Part or all of loss is unsubstantiated. | Paras. 23 29, 130 132. | |

|  | Country | Claimant and UNCC claim No. | Total amount claimed, including permissible amendments a/ |  |  | Reclassified claim d/ |  |  |  | Decision of the Panel of Commissioners e/ |  |  |  |  |  |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
|  |  |  | Amount claimed in original currency b/ |  | Total amount claimed restated in USD c/ | Type of loss | Sub-category | Amount claimed in original currency |  | Amount recommended in original currency |  | Amount recommended in USD | Reasons for denial or reduction of award | Report citation | Total award in USD |
| 82 | United Kingdom | Smith Renton & Company Limited<br>4001925 | GBP | 284,544 | 540,958 | Contract | Goods lost or destroyed in transit | GBP | 30,911 | GBP | 23,557 | 43,624 | Part or all of loss is unsubstantiated. | Paras. 23-29, 62. | 167,092 |
|  |  |  |  |  |  | Contract | Cancelled orders from buyers in Kuwait, UAE and Bahrain | GBP | 157,712 | GBP | 63,171 | 116,983 | Part or all of loss is not direct;<br>Calculated loss is less than loss alleged. | Paras. 80, 83; 88-90. |  |
|  |  |  |  |  |  | Contract | Increased costs (travel costs) | GBP | 11,140 | GBP | 3,030 | 5,611 | Part or all of loss is unsubstantiated. | Paras. 23-29. |  |
|  |  |  |  |  |  | Contract | Customer incentives | GBP | 14,990 | GBP | 472 | 874 | Part or all of loss is not direct. | Para. 97. |  |
|  |  |  |  |  |  | Other | ECGD claim preparation costs | GBP | 1,100 | GBP | 0 | 0 | Part or all of loss is not direct. | Para. 134. |  |
|  |  |  |  |  |  | Interest | N/A | GBP | 68,691 | GBP | 0 | 0 | Interest on amount awarded is to be determined as per Governing Council decision 16. (Paras. 147-148) |  |  |
| 83 | United Kingdom | Remsdaq Ltd.<br>4001994 | GBP | 105,121 | 512,196 | Contract | Goods lost or destroyed in transit | GBP | 105,121 | GBP | 42,048 | 77,867 | Calculated loss is less than the loss alleged;<br>Part or all of the loss is unsubstantiated. | Paras. 63; 23-29, 62 | 77,867 |
|  |  |  | KWD | 90,268 |  | Contract | Goods lost or destroyed in transit | KWD | 90,286 | KWD | 0 | 0 | No proof of loss. | Paras. 27, 80 |  |

|  | Country | Claimant and UNCC claim No. | Total amount claimed, including permissible amendments a/ |  |  | Reclassified claim d/ |  |  |  | Decision of the Panel of Commissioners e/ |  |  |  |  |  |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
|  |  |  | Amount claimed in original currency b/ |  | Total amount claimed restated in USD c/ | Type of loss | Sub-category | Amount claimed in original currency |  | Amount recommended in original currency |  | Amount recommended in USD | Reasons for denial or reduction of award | Report citation | Total award in USD |
| 84 | United Kingdom | Ibatex Limited<br>4002012 | GBP | 87,115 | 165,618 | Contract | Goods shipped but diverted | GBP | 18,361 | GBP | 18,361 | 34,002 | N/A |  | 161,324 |
|  |  |  |  |  |  | Contract | Goods manufactured but not shipped | GBP | 68,754 | GBP | 68,754 | 127,322 | N/A |  |  |
| 85 | United Kingdom | Royal Ordnance Plc.<br>4002019 | GBP | 929,789 | 1,767,660 | Contract | Goods delivered to Kuwait but not paid for | GBP | 631,750 | GBP | 0 | 0 | Part or all of loss is not direct. | Paras. 51-55. | 82,407 |
|  |  |  |  |  |  | Contract | Interrupted contract (contract price) | GBP | 123,599 | GBP | 44,500 | 82,407 | Part or all of loss is unsubstantiated; Calculated loss is less than loss alleged. | Paras. 23-29, 87-89. |  |
|  |  |  |  |  |  | Interest | N/A | GBP | 174,440 | GBP | Awaiting decision | Awaiting decision | Interest on amount awarded is to be determined as per Governing Council decision 16. (Paras. 147-148) |  |  |
| 86 | United Kingdom | Rosebud International Limited<br>4002047 | GBP | 2,700 | 5,133 | Contract | Goods manufactured but not shipped | GBP | 2,700 | GBP | 0 | 0 | Part or all of loss is not direct; Deduction for failure to mitigate. | Paras. 87; 88-90. | 0 |
| 87 | United Kingdom | R.P. Adam Limited<br>4002116 | GBP | 6,849 | 13,021 | Contract | Goods shipped but diverted | GBP | 4,163 | GBP | 0 | 0 | Calculated loss is less than loss alleged. | Para. 69. | 0 |
|  |  |  |  |  |  | Contract | Legal costs incurred | GBP | 2,686 | GBP | 0 | 0 | No proof of loss. | Para. 27. |  |

| | Country | Claimant and UNCC claim No. | Total amount claimed, including permissible amendments a/ | | | Reclassified claim d/ | | | | Decision of the Panel of Commissioners e/ | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Amount claimed in original currency b/ | | Total amount claimed restated in USD c/ | Type of loss | Sub category | Amount claimed in original currency | | Amount recommended in original currency | | Amount recommended in USD | Reasons for denial or reduction of award | Report citation | Total award in USD |
| 88 | United Kingdom | Francis Shaw and Company (Manchester) Ltd.<br>4002141 | GBP | 2,783,096 | 5,291,057 | Contract | Goods manufactured but not shipped | GBP | 2,312,542 | GBP | 0 | 0 | Part or all of loss is unsubstantiated. | Paras. 23-29, 87. | 0 |
| | | | | | | Business loss or course of dealing | Increased costs (redundancy costs) | GBP | 86,817 | GBP | 0 | 0 | Part or all of loss is not direct;<br>Part or all of loss is unsubstantiated. | Paras. 113;<br>23-29,<br>117-118. | |
| | | | | | | Interest | N/A | GBP | 383,737 | GBP | 0 | 0 | Principal sum is not compensable. | | |
| 89 | United Kingdom | Weir Pumps Limited<br>4002144 | GBP | 8,154,718 | 15,503,266 | Contract | Interrupted contract - Al Shuallah project | GBP | 3,882,025 | GBP | 1,890,804 | 3,501,489 | Part or all of loss is not direct;<br>No proof of loss;<br>Part or all of loss is unsubstantiated. | Paras. 81, 125;<br>27;<br>23-29,<br>87-88,<br>126-127 | 4,096,250 |
| | | | | | | Contract | Interrupted contract - Dibbis project | GBP | 764,865 | GBP | 0 | 0 | "Arising prior to" exclusion | Paras. 34-37. | |
| | | | | | | Contract | Interrupted contract - Al Quadisayah project | GBP | 223,628 | GBP | 0 | 0 | No proof of loss. | Paras. 27, 87. | |
| | | | | | | Contract | Interrupted contract - Al Ouja project | GBP | 114,709 | GBP | 0 | 0 | No proof of loss. | Paras. 27,<br>87. | |

| | Country | Claimant and UNCC claim No. | Total amount claimed, including permissible amendments a/ | | | Reclassified claim d/ | | | | Decision of the Panel of Commissioners e/ | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Amount claimed in original currency b/ | | Total amount claimed restated in USD c/ | Type of loss | Sub-category | Amount claimed in original currency | | Amount recommended in original currency | | Amount recommended in USD | Reasons for denial or reduction of award | Report citation | Total award in USD |
| 89 | United Kingdom | Weir Pumps Limited (continued)<br>4002144 | | | | Contract | Spare parts contract | GBP | 620,931 | GBP | 321,171 | 594,761 | "Arising prior to" exclusion;<br>Part or all of loss is not direct;<br>Part or all of loss is unsubstantiated. | Paras. 34-37; 81, 88, 23-29. | |
| | | | | | | Contract | Interrupted contract - Kuwait Ring Road project | GBP | 36,650 | GBP | 0 | 0 | Part or all of loss is unsubstantiated | Paras. 23-29, 87. | |
| | | | | | | Contract | Interrupted contract - Al Shemal project | GBP | 16,770 | GBP | 0 | 0 | Part or all of loss is unsubstantiated. | Paras. 23-29, 87. | |
| | | | | | | Business loss or course of dealing | Course of dealing (spare parts) | GBP | 928,888 | GBP | 0 | 0 | No proof of loss. | Paras. 102-104. | |
| | | | | | | Claim preparation costs | N/A | GBP | 44,366 | GBP | Awaiting decision | Awaiting decision | To be resolved by Governing Council. (Para. 149) | | |
| | | | | | | Other | ECGD claim preparation costs | GBP | 72,600 | GBP | 0 | 0 | Part or all of loss is not direct. | Para. 134. | |
| | | | | | | Interest | N/A | GBP | 1,449,286 | GBP | Awaiting decision | Awaiting decision | Interest on amount awarded is to be determined as per Governing Council decision 16. (Paras. 147-148) | | |

|  | Country | Claimant and UNCC claim No. | Total amount claimed, including permissible amendments a/ |  |  | Reclassified claim d/ |  |  |  | Decision of the Panel of Commissioners e/ |  |  |  |  |  |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
|  |  |  | Amount claimed in original currency b/ |  | Total amount claimed restated in USD c/ | Type of loss | Sub category | Amount claimed in original currency |  | Amount recommended in original currency |  | Amount recommended in USD | Reasons for denial or reduction of award | Report citation | Total award in USD |
| 90 | United Kingdom | Parsons Turbine Generators Limited (Formerly NEI Parsons Ltd.)<br>4062151 | GBP | 9,029,306 | 17,165,981 | Contract | Contract cancellation costs | GBP | 7,129,059 | GBP | 0 | 0 | Deduction for failure to mitigate;<br>Part or all of loss is unsubstantiated;<br>Failure to comply with formal filing requirements (statement of claim). | Paras. 68-69; 23-29; 87-90; 23 | 14,220 |
|  |  |  |  |  |  | Business loss or course of dealing | Increased costs (finance costs) | GBP | 72,449 | GBP | 0 | 0 | Part or all of loss is unsubstantiated;<br>No proof of direct loss. | Paras. 23-29; 86. |  |
|  |  |  |  |  |  | Business loss or course of dealing | Increased costs (general administration costs) | GBP | 25,000 | GBP | 0 | 0 | No proof of loss. | Paras. 27, 126. |  |
|  |  |  |  |  |  | Business loss or course of dealing | Increased costs (redundancy costs) | GBP | 1,417,378 | GBP | 0 | 0 | No proof of direct loss;<br>Part or all of loss is unsubstantiated. | Paras. 113; 23-29; 117-118 |  |
|  |  |  |  |  |  | Tangible property | Vehicles, equipment, stock and household effects | GBP | 164,624 | GBP | 7,679 | 14,220 | Calculated loss is less than loss alleged;<br>Part or all of loss is unsubstantiated. | Paras. 130-132; 23-29. |  |

|  | Country | Claimant and UNCC claim No. | Total amount claimed, including permissible amendments a/ |  |  | Reclassified claim d/ |  |  |  | Decision of the Panel of Commissioners e/ |  |  |  |  |  |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
|  |  |  | Amount claimed in original currency b/ |  | Total amount claimed restated in USD c/ | Type of loss | Sub-category | Amount claimed in original currency |  | Amount recommended in original currency |  | Amount recommended in USD | Reasons for denial or reduction of award | Report citation | Total award in USD |
| 90 | United Kingdom | Parsons Turbine Generators Limited (continued)<br>4002151 |  |  |  | Payment or relief to others | Payments to staff held hostage | GBP | 16,958 | GBP | 0 | 0 | Part or all of loss is unsubstantiated. | Paras. 23-29, 117 |  |
|  |  |  |  |  |  | Business loss or course of dealing | Iraqi Dinar income written off | IQD | 107,504 | IQD | 0 | 0 | Part or all of loss is unsubstantiated | Paras. 23-29 |  |
| 91 | United Kingdom | Edwin Woodhouse & Co. Ltd.<br>4002318 | GBP | 115,127 | 218,873 | Contract | Goods delivered to Kuwait but not paid for | GBP | 744 | GBP | 0 | 0 | No proof of direct loss | Paras. 51-55 | 193,202 |
|  |  |  |  |  |  | Contract | Interrupted contract (loss of profit) | GBP | 114,383 | GBP | 104,329 | 193,202 | Calculated loss is less than loss alleged; Part or all of loss is unsubstantiated. | Paras. 88-90; 23-29, 87 |  |
| 92 | United Kingdom | Radiodetection Limited<br>4002361 | GBP | 2,189 | 4,162 | Contract | Goods delivered to Kuwait but not paid for | GBP | 2,189 | GBP | 0 | 0 | No proof of direct loss. | Paras. 51-55. | 0 |

|  | Country | Claimant and UNCC claim No. | Total amount claimed, including permissible amendments a/ |  |  | Reclassified claim d/ |  |  |  | Decision of the Panel of Commissioners e/ |  |  |  |  |  |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
|  |  |  | Amount claimed in original currency b/ |  | Total amount claimed restated in USD c/ | Type of loss | Sub category | Amount claimed in original currency |  | Amount recommended in original currency |  | Amount recommended in USD | Reasons for denial or reduction of award | Report citation | Total award in USD |
| 93 | United States of America | General Motors Overseas Distribution Corporation<br>4000603 | USD | 1,049,151 | 1,049,151 | Contract | Goods shipped but diverted | USD | 434,968 | USD | 108,165 | 108,165 | No proof of direct loss. (It has not been established that the incentives were provided as a direct result of invasion.) | Paras. 19-20 | 160,394 |
|  |  |  |  |  |  | Tangible property | Vehicles | USD | 69,638 | USD | 52,229 | 52,229 | Calculated loss is less than loss alleged. | Paras. 130-132. |  |
|  |  |  |  |  |  | Payment or relief to others | Evacuation costs | USD | 544,544 | USD | 0 | 0 | Part or all of loss is outside compensable area. | Paras. 97, 121. |  |
| 94 | United States of America | Hydril Co (1)<br>4002236 | USD | 13,500 | 13,500 | Tangible property | Equipment | USD | 13,500 | USD | 3,627 | 3,627 | Calculated loss is less than loss alleged. | Paras. 130-132. | 3,627 |
|  |  |  |  |  |  | Interest | N/A | USD | Not specified | USD | Awaiting decision | Awaiting decision | Interest on amount awarded is to be determined as per Governing Council decision 16. (Paras. 147-148) |  |  |
| 95 | United States of America | Hydril Co (2)<br>4002237 | USD | 27,253 | 27,253 | Contract | Interrupted contract (finance costs) | USD | 9,803 | USD | 0 | 0 | Part or all of loss is not direct. | Para. 86. | 0 |
|  |  |  |  |  |  | Contract | Interrupted contract (loss of profit) | USD | 17,450 | USD | 0 | 0 | Part or all of loss is unsubstantiated. | Paras. 23-29, 87. |  |
|  |  |  |  |  |  | Interest | N/A | USD | Not specified | USD | 0 | 0 | Principal sum not compensable. |  |  |

| | Country | Claimant and UNCC claim No. | Total amount claimed, including permissible amendments a/ | | | Reclassified claim d/ | | | | Decision of the Panel of Commissioners e/ | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Amount claimed in original currency b/ | | Total amount claimed restated in USD c/ | Type of loss | Sub-category | Amount claimed in original currency | | Amount recommended in original currency | | Amount recommended in USD | Reasons for denial or reduction of award | Report citation | Total award in USD |
| 96 | United States of America | Hydril Co (3)<br>4002238 | USD | 108,265 | 108,265 | Contract | Interrupted contract (loss of profit) | USD | 108,265 | USD | 0 | 0 | Part or all of loss is unsubstantiated. | Paras. 23-29, 87. | 0 |
| | | | | | | Interest | N/A | USD | Not specified | USD | 0 | 0 | Principal sum is not compensable. | | |
| 97 | United States of America | Hydril Co (4)<br>4002239 | USD | 1,728 | 1,728 | Contract | Interrupted contract (loss of profit) | USD | 1,728 | USD | 0 | 0 | Part or all of loss is unsubstantiated. | Paras. 23-29, 87. | 0 |
| | | | | | | Interest | N/A | USD | Not specified | USD | 0 | 0 | Principal sum is not compensable. | | |
| 98 | United States of America | Precision Air Structures Co. Inc.<br>4002253 | USD | 1,004,299 | 1,004,299 | Contract | Goods manufactured but not shipped | USD | 1,004,299 | USD | 407,406 | 407,406 | Part or all of loss is unsubstantiated. | Paras. 23-29, 87. | 407,406 |
| 99 | United States of America | Teletec Corp.<br>4002255 | USD | 8,668,256 | 8,668,256 | Contract | Interrupted contract (loss of profit) | USD | 8,656,756 | USD | 0 | 0 | Part or all of loss is not direct. (Contract was interrupted prior to the invasion). | Paras. 79-81. | 0 |
| | | | | | | Tangible property | Equipment in Kuwait | USD | 11,500 | USD | 0 | 0 | Part or all of loss is unsubstantiated. | Paras. 23-29, 130-132. | |

## Notes to table of recommendations

a/ In accordance with the Governing Council's decision taken at its twenty-seventh session held in March 1998, the Panel has not considered unsolicited supplements or amendments submitted after 11 May 1998 to previously filed claims. Accordingly, the total claimed amounts stated in this table include only those supplements and amendments to the original claimed amounts submitted prior to 11 May 1998 or submitted after that date where these comply with the requirements of the Commission.

b/ Currency codes: AED (United Arab Emirates dirham), ATS (Austrian schilling), CHF (Swiss franc), DEM (Deutsche mark), DKK (Danish kroner), ESP (Spanish peseta), GBP (Pound sterling), HUF (Hungarian Forint), ILS (Israeli schekel), INR (Indian rupee), IQD (Iraqi dinar), IRR (Iranian rial), ITL (Italian lire), JPY (Japanese yen), KWD (Kuwaiti dinar), NLG (Netherlands guilder), PTE (Portuguese escudos), SAR (Saudi Arabian riyal), SEK (Swedish kroner), THB (Thai bhat), USD (United States dollar).

c/ In the column entitled "Total amount claimed restated in USD", for claims originally expressed by the claimant in currencies other than United States dollars, the secretariat has converted the amount claimed to United States dollars based on August 1990 rates of exchange as indicated in the United Nations Monthly Bulletin of Statistics, or in cases where this exchange rate is not available, the latest exchange rate available prior to August 1990. This conversion is made solely to provide an indication of the amount claimed in United States dollars for comparative purposes. In contrast, the date of the exchange rate that was applied to calculate the recommended amount is described in paragraphs 140 to 146.

d/ In the columns under the heading entitled "Reclassified claim", the Panel has recategorized certain of the losses using standard classifications, as appropriate, since many claimants have presented similar losses in different ways (see columns entitled "Type of loss" and "Sub-category"). This procedure is intended to ensure consistency, equality of treatment and fairness in the analysis of the claims and is consistent with the practice of the Commission. In addition, on occasion, the secretariat has also recalculated the amount claimed in the currency of the original loss (see column entitled "Amount claimed in original currency").

e/ As used in this table, "N/A" means not applicable.

# Annex II

## Decision concerning the sixth instalment of E2 claims taken by the Governing Council of the United Nations Compensation Commission at its 105th meeting, held on 15 March 2001 at Geneva*

The Governing Council,

Having received, in accordance with article 38 of the Provisional Rules for Claims Procedure ("the Rules"), the report and recommendations made by the panel of Commissioners concerning the sixth instalment of "E2" claims, covering 95 claims, [1] and a request from the Government of Romania for the withdrawal of one claim included in the Panel's report,

1. Approves the recommendations made by the panel of Commissioners, with the exception of the withdrawn claim, and accordingly,

2. Decides, pursuant to article 40 of the Rules, to approve the amounts of the recommended awards concerning the claims covered in the report, with the exception of the withdrawn claim. The aggregate amounts per country, based on the recommendations contained in annex II of the report, are as follows:

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* Previously issued as document S/AC.26/Dec.115 (2001).

[1] The text of the report appears in document S/AC.26/2001/1 (annex I above).

| Country | Number of claims recommended for payment | Number of claims not recommended for payment | Amount of compensation claimed (USD) | Amount of compensation recommended (USD) |
|---|---|---|---|---|
| Austria | - | 1 | 272,777 | nil |
| Bahrain | 1 | - | 10,455 | 2,160 |
| Czech Republic | - | 2 | 5,820,683 | nil |
| Denmark | 1 | - | 15,316,274 | 109,720 |
| Egypt | 3 | 1 | 9,216,339 | 80,858 |
| Germany | 5 | 5 | 1,422,383 | 305,462 |
| Hungary | - | 1 | 1,828,391 | nil |
| India | 1 | 4 | 2,240,364 | 2,848 |
| Iran | - | 1 | 392,204 | nil |
| Israel | - | 2 | 578,025 | nil |
| Italy | 2 | 4 | 100,776,635 | 21,683 |
| Japan | 2 | 1 | 8,564,040 | 4,269,408 |
| Malaysia | 1 | - | 79,608 | 46,128 |
| Netherlands | - | 4 | 1,066,816 | nil |
| Portugal | 1 | 2 | 678,167 | 10,000 |
| Republic of Korea | - | 1 | 3,213,290 | nil |
| Saudi Arabia | 2 | 3 | 42,955,789 | 575,171 |
| Spain | 2 | 3 | 12,471,441 | 307,816 |
| Switzerland | 1 | - | 525,560 | 36,254 |
| Thailand | 1 | - | 30,916 | 18,868 |
| The former Yugoslav Republic of Macedonia | - | 4 | 8,877,377 | nil |
| Turkey | 2 | 2 | 7,614,190 | 809,801 |
| United Arab Emirates | 2 | - | 1,230,525 | 211,916 |
| United Kingdom | 11 | 8 | 58,384,086 | 6,291,586 |
| United States | 3 | 4 | 10,872,452 | 571,427 |
| Total | 41 | 53 | 294,438,787 | 13,671,106 |

3. Reaffirms that when funds become available payments shall be made in accordance with decision 100 (S/AC.26/Dec.100 (2000)).

4. Recalls that when payments are made in accordance with decision 100, and pursuant to the terms of decision 18 (S/AC.26/Dec.18 (1994)), Governments shall distribute amounts received to the designated claimants in respect of approved awards within six months of receiving payment, and shall, not later than three months after the expiration of this time limit, provide information on such distribution,

5. Takes note, of the withdrawal of the claim submitted by the Government of Romania, which was received after the Panel signed the report and submitted its report and recommendations to the Governing Council,

6. Requests the Executive Secretary to provide a copy of the report to the Secretary-General, to the Government of the Republic of Iraq and to each respective Government.

# Annex III

## Report and recommendations made by the Panel of Commissioners concerning the seventeenth instalment of E3 claims*

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* Previously issued as document S/AC.26/2001/2.

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## Introduction

1. The Governing Council of the United Nations Compensation Commission (the "Commission") appointed the present Panel of Commissioners (the "Panel"), composed of Messrs. John Tackaberry (Chairman), Pierre Genton and Vinayak Pradhan, at its twenty-eighth session in June 1998, to review construction and engineering claims filed with the Commission on behalf of corporations and other legal entities in accordance with the relevant Security Council resolutions, the Provisional Rules for Claims Procedure (S/AC.26/1992/10) (the "Rules") and other Governing Council decisions. This report contains the recommendations to the Governing Council by the Panel, pursuant to article 38(e) of the Rules, concerning sixteen claims included in the seventeenth instalment. Each of the claimants seeks compensation for loss, damage or injury allegedly arising out of Iraq's 2 August 1990 invasion and subsequent occupation of Kuwait.

2. One of the claims, that of Marubeni Corporation, filed with the Commission by the Government of Japan, was withdrawn during the proceedings. (See paragraph 128, infra).

3. Based on its review of the claims presented to it to date and the findings of other panels of Commissioners contained in their reports and recommendations, this Panel has set out some general propositions concerning construction and engineering claims filed on behalf of corporations (the ""E3" Claims"). The general propositions are contained in Annex I entitled "Summary of General Propositions" (the "Summary"). The Summary forms part of, and is intended to be read together with, this report.

4. Each of the claimants included in the seventeenth instalment had the opportunity to provide the Panel with information and documentation concerning the claims. The Panel has considered evidence from the claimants and the responses of Governments to the reports of the Executive Secretary issued pursuant to article 16 of the Rules. The Panel has retained consultants with expertise in valuation and in construction and engineering. The Panel has taken note of certain findings by other panels of Commissioners, approved by the Governing Council, regarding the interpretation of relevant Security Council resolutions and Governing Council decisions. The Panel was mindful of its function to provide an element of due process in the review of claims filed with the Commission. Finally, the Panel has further amplified both procedural and substantive aspects of the process of formulating recommendations in the Summary to its consideration of the individual claims.

## I. PROCEDURAL HISTORY

### A. The procedural history of the claims in the seventeenth instalment

5. A summary of the procedural history of the "E3" Claims is set down in paragraphs 10 to 18 of the Summary.

6. On 20 June 2000, the Panel issued a procedural order relating to the claims included in the seventeenth instalment. None of the claims presented complex issues, voluminous documentation or extraordinary losses that would require the Panel to classify any of them as "unusually large or complex" within the meaning of article 38(d) of the Rules. The Panel thus had an obligation to complete its review of the claims within 180 days of the date of the procedural order, pursuant to article 38(c) of the Rules.

7. In view of the review period and the available information and documentation, the Panel determined that it was able to evaluate the claims without additional information or documents from the Government of Iraq. Nonetheless, due process, the provision of which is the responsibility of the Panel, has been achieved by the insistence of the Panel on the observance by claimants of the article 35(3) requirement for sufficient documentary and other appropriate evidence.

8. In drafting this report, the Panel has not included specific citations from restricted or non-public documents that were produced or made available to it for the completion of its work.

## B. The claimants

9. This report contains the Panel's findings with respect to the following claims for losses allegedly caused by Iraq's invasion and occupation of Kuwait:

(a) Bureau Veritas, Registre International de Classification de Navires et d'Aéronefs, a joint-stock company organised under the laws of France, which seeks compensation in the total amount of 1,406,944 United States dollars (USD);

(b) Thyssen Rheinstahl Technik GmbH, a corporation organised under the laws of Germany, which seeks compensation in the total amount of USD 4,648,563;

(c) AK India International Private Limited, a corporation organised under the laws of India, which seeks compensation in the total amount of USD 3,158,789;

(d) Dodsal Limited, a corporation organised under the laws of India, which seeks compensation in the total amount of USD 3,234,298;

(e) Water and Power Consultancy Services (India) Limited, a corporation organised under the laws of India, which seeks compensation in the total amount of USD 3,308,748;

(f) Japanese Consortium of Consulting Firms, a consortium organised under the laws of Japan, which seeks compensation in the total amount of USD 7,079,065;

(g) Elektrim Trade Company S.A., a corporation organised under the laws of Poland, which seeks compensation in the total amount of USD 2,672,886;

(h) Stock Company in Mixed Property "Iskra" Inzenering, a corporation organised under the laws of the Republic of Macedonia, which seeks compensation in the total amount of USD 4,132,643;

(i) Enka Teknik, a corporation organised under the laws of Turkey, which seeks compensation in the total amount of USD 5,885,376;

(j) HSG Engineer Contractor Haydar Soner Görker, a corporation organised under the laws of Turkey, which seeks compensation in the total amount of USD 1,496,273;

(k) GPT Middle East Limited, a corporation organised under the laws of the United Kingdom, which seeks compensation in the total amount of USD 1,432,112;

(l) Rozbank Engineering Ltd, a corporation organised under the laws of the United Kingdom, which seeks compensation in the total amount of USD 361,217;

(m) Medical Consultants International, Inc. (trading as Medcon Enterprises), a corporation organised under the laws of the United States of America, which seeks compensation in the total amount of USD 444,074;

(n) NA Penta Inc., a corporation organised under the laws of the United States of America, which seeks compensation in the total amount of USD 482,440; and

(o) XYZ Options, Inc., a corporation organised under the laws of the United States of America, which seeks compensation in the total amount of USD 1,788,963.

10. These amounts claimed in United States dollars represent the alleged loss amounts after correction for applicable exchange rates as described in paragraphs 55 to 57 of the Summary.

## II. BUREAU VERITAS, REGISTRE INTERNATIONAL DE CLASSIFICATION DE NAVIRES ET D'AÉRONEFS

11. Bureau Veritas, Registre International de Classification de Navires et d'Aéronefs ("Bureau Veritas") is a joint-stock company existing under French law. It carried out inspection services in factories and on sites in Iraq on behalf of Iraqi Government bodies for the purpose of issuing "Safety Operational Permits". It alleges that the performance of its contracts was interrupted by Iraq's invasion and occupation of Kuwait.

12. Bureau Veritas seeks compensation in the amount of USD 1,406,944 (stated by Bureau Veritas in the "E" claim form as 7,461,510 French francs (FRF)) for contract losses, loss of tangible property, payment or relief to others, and financial losses.

Table 1. Bureau Veritas's claim

| Claim element | Claim amount (USD) |
|---|---|
| Contract losses | 681,054 |
| Loss of tangible property | 208,944 |
| Payment or relief to others | 45,100 |
| Financial losses | 471,846 |
| Total | 1,406,944 |

### A. Contract losses

#### 1. Facts and contentions

13. Bureau Veritas seeks compensation in the amount of USD 681,054 (USD 431,983; 75,129 Iraqi dinars (IQD) and 730,000 Pesetas (ESP)) for contract losses. The losses were allegedly incurred in respect of 15 safety inspection contracts which Bureau Veritas was performing for various Iraqi Government bodies including the State Company for Oil Projects, the Technical Corps for Special Projects ("Techcorp") and the Iraqi State Cement Enterprise. The contracts were signed between 1987 and 1990. The prices of the contracts ranged from approximately USD 2,000 to approximately USD 1,300,000.

14. Bureau Veritas asserts that, as of 2 August 1990, the contracts were between 12 per cent and 100 per cent completed. It asserts that Iraq's invasion and occupation of Kuwait prevented payment for work performed.

#### 2. Analysis and valuation

15. In support of its claim for contract losses, in respect of 12 of the safety inspection contracts, Bureau Veritas only provided copies of invoices for the amounts claimed. These 12 contracts related to the

following projects: Baiji Fertiliser, STTP, IPSA II Shop Inspection, Saddam Field Development, Central Refinery and PC II, North Rumailah, SCOP South LPG Project, Deep Sea Terminal, UM Qsar Port, IPSA II (Daemen Shipyard) Lube Oil Plant in Basrah, and West Qurna Oilfield. In respect of these contracts, Bureau Veritas provided no evidence that the invoices were approved by the Iraqi employer or that the work was actually performed. Accordingly, the Panel is unable to recommend compensation in respect of these contracts.

16. In support of its claim in respect of the thirteenth contract, in relation to the Central Refinery project, Bureau Veritas provided the inspection contract dated 19 November 1989, an invoice dated 6 March 1990 for the amount claimed (USD 46,489), and inspection certificates indicating that the work was carried out between October and December 1989. The Panel finds that Bureau Veritas performed the work in relation to the Central Refinery project prior to 2 May 1990. The claim is therefore outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687 (1991). Applying the approach taken with respect to the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991), as set out in paragraphs 41 to 43 of the Summary, the Panel is unable to recommend compensation for any loss arising out of this contract.

17. In support of its claim in respect of the fourteenth contract, in relation to the Petrochemical Complex, Bureau Veritas provided an invoice dated 9 August 1990 issued to Techcorp. In addition, it provided a telex dated 7 June 1990 from Banque Française du Commerce Extérieur to Rafidain Bank, Iraq requesting the issue of a performance guarantee in favour of Bureau Veritas. The Panel finds that the evidence provided does not prove that the invoice was approved by Techcorp or that the work was actually performed. Accordingly, the Panel is unable to recommend compensation in respect of this contract.

18. In support of its claim in respect of the fifteenth contract, for Inspection of Spare Parts and Castables in Spain, Bureau Veritas provided an invoice dated 25 July 1990 issued to the Iraqi Cement State Enterprise and five inspection certificates (although six were referred to in the claim documentation) dated between December 1989 and May 1990. The Panel finds that work leading to five inspection certificates was performed prior to 2 May 1990, and work leading to one inspection certificate was performed after 2 May 1990. The Panel values the work performed after 2 May 1990 at ESP 121,667. Applying the approach taken with respect to the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991), as set out in paragraphs 41 to 43 of the Summary, the Panel recommends compensation in the amount of USD 1,250 (ESP 121,667) for the work performed on one inspection certificate.

### 3. Recommendation

19. The Panel recommends compensation in the amount of USD 1,250 for contract losses.

## B. Loss of tangible property

20. Bureau Veritas seeks compensation in the amount of USD 208,944 (FRF 1,095,283) for loss of tangible property. Bureau Veritas did not explain the circumstances of the loss of the tangible property, but stated that the property, which comprised installations, transport equipment, office and computer equipment, and furnishings, was located in Baghdad.

21. In support of its claim for loss of tangible property, Bureau Veritas provided inventories, fixed asset entry and withdrawal forms, individual account sheets and an internal memorandum dated 18 February 1991 requesting that property lost during Iraq's invasion and occupation of Kuwait be settled as "exceptional losses". Bureau Veritas provided no independent evidence, such as invoices and certificates of importation, to establish that it owned the property claimed, that the property was in Iraq as at 2 August 1990 and that it was lost directly due to Iraq's invasion and occupation of Kuwait. The Panel finds that the evidence provided by Bureau Veritas is insufficient to substantiate its claim.

### Recommendation

22. The Panel recommends no compensation for loss of tangible property.

## C. Payment or relief to others

### 1. Facts and contentions

23. Bureau Veritas seeks compensation in the amount of USD 45,100 (FRF 165,726 and 7,093 Pounds sterling (GBP)) for payment or relief to others. Bureau Veritas asserts that two of its employees were held hostage from 2 August to 16 December 1990 and that during this time, it bore the cost of salaries (FRF 122,959 and GBP 4,036); social-insurance contributions (FRF 42,767) and "other costs" (GBP 3,057).

24. Bureau Veritas did not explain what "other costs" comprised. The claim documentation refers to a "bonus allowance", accident insurance, and an air-fare, but these do not add up to the full amount claimed.

### 2. Analysis and valuation

25. In support of its claim for payment or relief to others, Bureau Veritas provided internal debit notifications dated October 1990 to March 1991 showing the salary and other amounts paid to one of the employees, a copy of one of the employees' passports, and an affidavit of Bureau Veritas's human resources manager stating the salary paid to the two employees.

26. Bureau Veritas also provided an untranslated affidavit from one employee, and an untranslated copy of a letter from the French Foreign Ministry. However, in view of article 6 of the Rules, the Panel did not consider these documents.

27. The Panel finds that the salaries allegedly paid by Bureau Veritas to its two employees are prima facie compensable as salary paid for unproductive labour. However, the Panel finds that Bureau Veritas only provided sufficient evidence to substantiate its loss in relation to one of the employees. Only in respect of one employee did Bureau Veritas provide evidence proving that he was detained in Iraq until 27 October 1990. Accordingly, the Panel recommends compensation for salaries and social-insurance contributions for the period 2 August 1990 to 27 October 1990, in the amount of USD 6,323 (FRF 33,145).

28. The Panel finds that Bureau Veritas did not provide sufficient evidence in relation to the claim for "other costs" to enable the Panel to determine whether the costs were directly caused by Iraq's invasion and occupation of Kuwait. Accordingly, the Panel is unable to recommend compensation for "other costs".

### 3. Recommendation

29. The Panel recommends compensation in the amount of USD 6,323 for payment or relief to others.

## D. Financial losses

### 1. Facts and contentions

30. Bureau Veritas seeks compensation in the total amount of USD 471,846 for financial losses, including (a) bank guarantees (IQD 51,616 and USD 63,300); (b) balance in bank account no. 0327, Rafidain Bank, Baghdad (IQD 54,886); and (c) "cash in hand" (IQD 20,556).

31. Bureau Veritas did not clearly explain its claim. In respect of item (a), bank guarantees, the annex to the "E" claim form dated 26 September 1995 refers to the amounts of IQD 51,616 and USD 63,300 for bank guarantees with no further explanation. Bureau Veritas's response to the article 34 notification refers to three "bank guarantees given by Head office" in the total amount of USD 440,000, and three "local bank guarantees" in the total amount of IQD 41,516.

32. In its response to the article 34 notification, Bureau Veritas provided copies of three performance bonds totalling USD 440,000. However, it did not provide copies of the three "local bank guarantees", and did not explain how the performance bonds provided related to its alleged losses of IQD 51,616 and USD 63,300. In its response to the article 34 notification, Bureau Veritas also sought to rely on the trade embargo and contended that "due to the embargo put in force against Iraq, we cannot obtain the release

of the Bank Guarantee. These bank guarantees are still considered as financial exposure in our financial balance sheets".

33. Bureau Veritas provided no further information in relation to item (b), balance in bank account, or item (c), "cash in hand".

### 2. Analysis and valuation

34. In relation to item (a), bank guarantees, the Panel finds that Bureau Veritas failed to provide sufficient evidence of its alleged losses. In any event, applying the approach taken with respect to guarantees as set out in paragraphs 85 to 94 of the Summary, the Panel recommends no compensation.

35. In relation to item (b), balance in bank account, and item (c), cash in hand, the Panel finds that Bureau Veritas failed to provide sufficient evidence of its alleged losses. In any event, applying the approach taken with respect to loss of funds in bank accounts and loss of petty cash in Iraq, set out in paragraphs 135 to 140 of the Summary, the Panel finds that the amounts claimed are not compensable.

### 3. Recommendation

36. The Panel recommends no compensation for financial losses.

## E. Summary of recommended compensation for Bureau Veritas

Table 2. Recommended compensation for Bureau Veritas

| Claim element | Claim amount (USD) | Recommended compensation (USD) |
|---|---|---|
| Contract losses | 681,054 | 1,250 |
| Loss of tangible property | 208,944 | nil |
| Payment or relief to others | 45,100 | 6,323 |
| Financial losses | 471,846 | nil |
| **Total** | 1,406,944 | 7,573 |

37. Based on its findings regarding Bureau Veritas's claim, the Panel recommends compensation in the amount of USD 7,573. The Panel finds the date of loss to be 2 August 1990.

## III. THYSSEN RHEINSTAHL TECHNIK GMBH

38. Thyssen Rheinstahl Technik GmbH ("Thyssen") is a corporation existing under the laws of Germany. On 8 February 1989, it entered into a contract with the Nassr Enterprise for Mechanical Industries, Iraq ("NEMI") for the supply of a rotary forging line for billets and bars production (the "contract"). Thyssen asserts that the contract was interrupted due to Iraq's invasion and occupation of Kuwait.

39. Thyssen seeks compensation in the amount of USD 4,648,563 (7,261,056 Deutsche Mark (DEM)) for contract losses.

40. Thyssen also seeks compensation for interest on the principal amount of any award in an amount to be determined by the Commission. For the reasons stated in paragraph 58 of the Summary, the Panel makes no recommendation with respect to Thyssen's claim for interest.

Table 3. Thyssen's claim

| Claim element | Claim amount (USD) |
|---|---|
| Contract losses | 4,648,563 |
| Interest (no amount specified) | (--) |
| Total | 4,648,563 |

### A. Contract losses

#### 1. Facts and contentions

41. Thyssen seeks compensation in the amount of USD 4,648,563 (DEM 7,261,056) for contract losses, including (a) equipment delivered and services performed (DEM 6,961,056), and (b) claims made against Thyssen by sub-contractors (DEM 300,000).

42. The total value of the contract was DEM 63,500,000. Thyssen states that it intended to complete the contract within 21 months of its coming into force.

43. In relation to item (a), equipment delivered and services performed, Thyssen asserts that, prior to Iraq's invasion and occupation of Kuwait, it shipped equipment and provided engineering and supervision services to the value of DEM 53,793,056. It was paid DEM 46,832,000 but asserts that it was unable to obtain payment of the outstanding amount of DEM 6,961,056 because Iraq's invasion and occupation of Kuwait made it impossible for Thyssen to obtain the documents, such as the certificate of completion, which were required under the terms of the letter of credit in order to obtain payment.

44. In relation to item (b), claims made against Thyssen by sub-contractors, Thyssen asserts that the interruption of its contract with NEMI meant that it could not meet its payment obligations under certain of its sub-contracts. It asserts that the sub-contractors filed claims against Thyssen to the value of DEM 300,000.

### 2. Analysis and valuation

45. The Panel finds that NEMI is an agency of the State of Iraq.

46. In support of its claim for contract losses, Thyssen provided a copy of the contract with NEMI, a copy of an irrevocable letter of credit from the Central Bank of Iraq in favour of Thyssen, seven invoices approved by NEMI dated September 1989 to July 1990 for equipment delivered, six invoices approved by NEMI dated April 1990 to June 1990 for supervision services, and two invoices for supervision services not yet dated or approved.

47. In relation to item (a), equipment delivered and services performed, based on the evidence provided by Thyssen, the Panel finds that the total value of the invoices issued by Thyssen to NEMI was DEM 53,771,836 (DEM 21,220 less than the amount claimed). Of this, the Panel finds that a total of DEM 46,832,000 was paid by NEMI. The Panel finds that Thyssen was unable to collect the remaining amount of DEM 6,939,836 as a direct result of Iraq's invasion and occupation of Kuwait. The Panel finds that Thyssen provided sufficient evidence in support of these alleged losses. The Panel recommends compensation in the amount of USD 4,442,917 (DEM 6,939,836).

48. In relation to item (b), claims made against Thyssen by sub-contractors, the Panel finds that, despite a request for evidence in support of this portion of its claim, Thyssen provided no evidence. Accordingly, the Panel is unable to recommend compensation.

### 3. Recommendation

49. The Panel recommends compensation in the amount of USD 4,442,917 for contract losses.

## B. Summary of recommended compensation for Thyssen

Table 4. Recommended compensation for Thyssen

| Claim element | Claim amount (USD) | Recommended compensation (USD) |
|---|---|---|
| Contract losses | 4,648,563 | 4,442,917 |
| Interest (no amount specified) | (--) | (--) |
| Total | 4,648,563 | 4,442,917 |

50. Based on its findings regarding Thyssen's claim, the Panel recommends compensation in the amount of USD 4,442,917. The Panel finds the date of loss to be 2 August 1990.

## IV. AK INDIA INTERNATIONAL PRIVATE LIMITED

51. AK India International Private Limited ("AK India") is a corporation existing under the laws of India. On 30 October 1989, it entered into a contract with the State Company for Oil Projects, Iraq ("SCOP"), for the supply of engineering services for oil-based projects being executed by SCOP (the "contract"). It was in the process of establishing its branch office in Baghdad and stationing its engineers in Iraq when Iraq invaded Kuwait, thereby allegedly disrupting the performance of the contract.

52. AK India seeks compensation in the amount of USD 3,158,789 (IQD 7,963 and USD 3,133,184, converted by the claimant to USD 3,158,664) for contract losses, loss of profits, loss of tangible property, payment or relief to others, financial losses and interest.

53. The interest element is in the amount of USD 1,518,153. For the reasons stated in paragraph 58 of the Summary, the Panel makes no recommendation with respect to AK India's claim for interest.

Table 5. AK India's claim

| Claim element | Claim amount (USD) |
|---|---|
| Contract losses | 106,087 |
| Loss of profits | 906,415 |
| Loss of tangible property | 29,900 |
| Payment or relief to others | 290,642 |
| Financial losses | 307,592 |
| Interest | 1,518,153 |
| Total | 3,158,789 |

### A. Contract losses

#### 1. Facts and contentions

54. AK India seeks compensation in the amount of USD 106,087 (IQD 7,963 and USD 80,482, converted by the claimant to USD 105,963) for contract losses. It states that at the time of Iraq's invasion of Kuwait it had received confirmation from SCOP that it could mobilise 20 of its engineers to Iraq with a view to commencing work on the projects. As at 2 August 1990, it had stationed 14 of its engineers in Iraq and six more were ready to join. However, when Iraq invaded Kuwait, the six engineers did not depart from India, and the 14 already in Iraq were evacuated.

55. The work under the contract was suspended on 31 October 1990. AK India alleges that it was subsequently unable to obtain clearance of its bills by SCOP. The total unpaid invoices amount to USD 106,087.

### 2. Analysis and valuation

56. The Panel finds that SCOP is an agency of the State of Iraq.

57. In support of its claim for contract losses, AK India provided a copy of the contract, letters from SCOP requesting AK India to mobilise its engineers in Iraq, a copy of the engineers' standard appointment letter, the invoices relating to the work performed, and AK India's 1991 and 1992 accounts, in which the amount claimed appears as owing.

58. Based on the evidence provided by AK India, the Panel finds that AK India performed work to the value of USD 11,550 prior to 2 May 1990. The claim for unpaid invoices in relation to this work is outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687 (1991). Applying the approach taken with respect to the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991), as set out in paragraphs 41 to 43 of the Summary, the Panel is unable to recommend compensation for this amount.

59. The Panel finds that AK India performed work to the value of USD 94,537 (USD 68,932 and IQD 7,963) after 2 May 1990 for which it was not paid by SCOP. The Panel finds that AK India provided sufficient evidence in support of these alleged losses. The Panel recommends compensation for this amount.

### 3. Recommendation

60. The Panel recommends compensation in the amount of USD 94,537 for contract losses.

## B. Loss of profits

### 1. Facts and contentions

61. AK India seeks compensation in the amount of USD 906,415 for "anticipated loss in contract profits". It states that in respect of each engineer deployed on the project it would have earned USD 35,407 in the first year of the contract, with a yearly 10 per cent increase thereafter.

62. It asserts that the total contract income for 20 engineers over the three years of the contract, including overtime, would be USD 2,266,036. It arrives at the figure of USD 906,415 as loss of profits on the basis that, as company policy, it was spending 60 per cent of contract value, and saving 40 per cent.

### 2. Analysis and valuation

63. The Panel finds that AK India did not substantiate its assertions in relation to the amounts that would have been earned for each engineer. The Panel further finds that AK India failed to prove that the contract would have continued for the three years claimed but for Iraq's invasion and occupation of Kuwait. The Panel notes that under the terms of the contract, the contract could have been terminated by either party by giving two months' notice. Accordingly, the Panel finds that AK India failed to fulfil the evidentiary standard for loss of profits claims set out in paragraphs 125 to 131 of the Summary, and thus the Panel is unable to recommend compensation.

### 3. Recommendation

64. The Panel recommends no compensation for loss of profits.

## C. Loss of tangible property

65. AK India seeks compensation in the amount of USD 29,900 for loss of tangible property. AK India provided no explanation of its claim. It merely states that the claim is for "loss on account of furniture, office equipment and household goods damaged or lost on account of the war".

66. The Panel finds that AK India provided no evidence in support of its claim. It stated in its response to the article 34 notification that all documentation was destroyed in its Baghdad office. However, it failed to explain why it did not have at least some evidence at some other location of (a) ownership of the assets, (b) value of the assets, and (c) the presence of assets in Iraq on 2 August 1990.

67. The Panel recommends no compensation for loss of tangible property.

## D. Payment or relief to others

### 1. Facts and contentions

68. AK India seeks compensation in the amount of USD 290,642 for payment or relief to others. The claim is for (a) "agony caused by war" (USD 90,642), (b) "notice period salary" (USD 75,000), (c) "break-in-contract compensation" (USD 75,000), and (d) "evacuation air-fares" (USD 50,000).

69. In relation to item (a), "agony caused by war", AK India asserts that the company "suffered psychological and mental agony, which needs to be compensated". It calculated its claim as 10 per cent of the total profits that it expected to earn under the contract.

70. Item (b), "notice period salary", is described as "loss on account of notice period salary payable to employees due to stoppage of work resulting in termination of services".

71. Item (c), "break-in-contract compensation", is a claim in respect of four months' salary in lieu of notice which AK India asserts it was liable to pay under the terms of the employment contract.

72. In relation to item (d), evacuation airfares, AK India asserts that it had to pay travel expenses to 16 employees and their families from Baghdad to Delhi under the termination provisions of the employment contract.

### 2. Analysis and valuation

73. In relation to item (a), "agony caused by war", the Panel finds that psychological and mental agony cannot be suffered by a company. The Governing Council decided in decision 3 (S/AC.26/1991/3) and decision 8 (S/AC.26/1992/8) that claims to the Commission for mental pain and anguish could only be made by individuals. Claims of this nature could have been made by the particular individuals (if any) who suffered any such injury.

74. In relation to items (b), "notice period salary", (c) "break-in-contract compensation", and (d) "evacuation air-fares", the Panel finds that AK India provided no evidence in support of the claims.

75. The Panel is therefore unable to recommend compensation for payment or relief to others.

### 3. Recommendation

76. The Panel recommends no compensation for payment or relief to others.

## E. Financial losses

### 1. Facts and contentions

77. AK India seeks compensation in the amount of USD 307,592 for financial losses. The claim is for (a) maintenance of the Baghdad branch (USD 135,000), (b) advance rent (USD 33,600), (c) contract development and establishment expenses (USD 113,302), and (d) the balance of Iraqi bank accounts (USD 25,690).

78. In respect of item (a), maintenance of the Baghdad branch, AK India states that as the contract with SCOP was for a period of three years, its registration for its Baghdad branch was valid up until October 1992. It asserts that it was bound by local Iraqi laws to maintain a minimum local staff. Accordingly, it retained the services of its legal adviser, local accountant and public relations officer until October 1992. It claims USD 5,000 per month for the salaries of these employees from August 1990 to October 1992.

79. In respect of item (b), advance rent, AK India seeks compensation in the amount of USD 33,600 for advance rent paid for office accommodation for the employees. AK India asserts that the advance rent was "unutilised" as a direct result of Iraq's invasion and occupation of Kuwait.

80. In respect of item (c), contract development and establishment expenses, AK India asserts that the expenses spent on establishing its office, for example, "branch registration, travelling, hotel bills, documentation, recruitment, training, etc." are a direct loss, because it was unable to recover these amounts from the profits expected to be earned on the projects. It calculates its claim as 0.05 per cent of the contract value (USD 2,266,036), namely, USD 113,302.

81. In respect of item (d), the balance of Iraqi bank accounts, AK India asserts that "on account of the war, the funds credited to our accounts in Iraq have remained unusable since August 90".

### 2. Analysis and valuation

82. The Panel finds that AK India provided no evidence in support of its claim for financial losses. The Panel is therefore unable to recommend compensation.

### 3. Recommendation

83. The Panel recommends no compensation for financial losses.

## F. Summary of recommended compensation for AK India

Table 6. Recommended compensation for AK India

| Claim element | Claim amount (USD) | Recommended compensation (USD) |
|---|---|---|
| Contract losses | 106,087 | 94,537 |
| Loss of profits | 906,415 | nil |
| Loss of tangible property | 29,900 | nil |
| Payment or relief to others | 290,642 | nil |
| Financial losses | 307,592 | nil |
| Interest | 1,518,153 | (--) |
| Tocal | 3,158,789 | 94,537 |

84. Based on its findings regarding AK India's claim, the Panel recommends compensation in the amount of USD 94,537. The Panel finds the date of loss to be 2 August 1990.

## V. DODSAL LIMITED

85. Dodsal Limited ("Dodsal") is a corporation existing under the laws of India. It is engaged in the construction of oil, gas and water pipelines, industrial plants, civil and building works, and turnkey infrastructure projects. It asserts that when Iraq invaded and occupied Kuwait, it was forced to abandon construction machinery at a project site in Iraq.

86. Dodsal seeks compensation in the amount of USD 3,234,298 for loss of tangible property.

87. Dodsal also seeks compensation for interest on the principal amount of any award in an amount to be determined by the Commission. For the reasons stated in paragraph 58 of the Summary, the Panel makes no recommendation with respect to Dodsal's claim for interest.

88. The Panel notes that in the "E" claim form dated 30 September 1993 Dodsal sought compensation in the total amount of USD 5,750,533 for unpaid receivables, loss of rentals on construction machinery, and loss of tangible property. However, in its response to the article 15 notification dated 21 January 2000, Dodsal withdrew all of its claims but for the claim for loss of tangible property.

Table 7. Dodsal's claim

| Claim element | Claim amount (USD) |
|---|---|
| Loss of tangible property | 3,234,298 |
| Interest (no amount specified) | (--) |
| Total | 3,234,298 |

### A. Loss of tangible property

#### 1. Facts and contentions

89. Dodsal seeks compensation in the amount of USD 3,234,298 for loss of tangible property. On 10 May 1989, Dodsal entered into a contract with Dodsal Pte. Ltd of Singapore ("Dodsal Singapore") for the supply of construction machinery for the Saddam Oil Field Development Project in Iraq. Under the contract, Dodsal Singapore agreed to hire the equipment in return for a monthly rental fee. Dodsal Singapore undertook responsibility for the machinery while it was outside India. However, and apparently as a result of an arrangement between Dodsal, Dodsal Singapore, and the main contractor for the Saddam Oil Field Development Project, the claim in respect of this equipment has been filed by Dodsal.

90. Dodsal duly supplied the machinery, consisting of a pipe-bending machine, a pipelayer side boom, an air compressor, and an internal pneumatic line up clamp.

91. Dodsal states that when Iraq invaded Kuwait, its employees were evacuated and the machinery was abandoned at the project site in Iraq. It states that from August 1990 it made repeated efforts to retrieve the machinery from Iraq, and on 21 May 1992, the Security Council granted permission to Dodsal to remove the machinery from Iraq. However, the permission of the Security Council could not be implemented because in April 1992 an Iraqi presidential order had been issued to the Ministry of Military Industry of the Republic of Iraq and the North Oil Company of Iraq to impound the equipment.

### 2. Analysis and valuation

92. The Panel finds that the equipment was confiscated by the Iraqi authorities in April 1992. Accordingly, the approach with respect to the confiscation of tangible property by the Iraqi authorities after the liberation of Kuwait, as set out in paragraph 146 of the Summary, is applicable to this case. There are no special circumstances which would justify a departure from the principle set out in that paragraph and the Panel is unable to recommend compensation.

### 3. Recommendation

93. The Panel recommends no compensation for loss of tangible property.

## B. Summary of recommended compensation for Dodsal

Table 8. Recommended compensation for Dodsal

| Claim element | Claim amount (USD) | Recommended compensation (USD) |
|---|---|---|
| Loss of tangible property | 3,234,298 | nil |
| Interest (no amount specified) | (--) | (--) |
| Total | 3,234,298 | nil |

94. Based on its findings regarding Dodsal's claim, the Panel recommends no compensation.

## VI. WATER AND POWER CONSULTANCY SERVICES (INDIA) LIMITED

95. Water and Power Consultancy Services (India) Limited ("Water & Power") is a government-owned corporation existing under the laws of India. Its principal business is the provision of consultancy services in the water and power sector. As at August 1990 Water & Power was executing five projects in Iraq. It asserts that by September 1990 it had evacuated all of its personnel from Iraq and had closed down its Iraqi operations.

96. Water & Power seeks compensation in the amount of USD 3,308,748 for contract losses and loss of tangible property.

Table 9. Water & Power's claim

| Claim element | Claim amount (USD) |
|---|---:|
| Contract losses | 3,045,548 |
| Loss of tangible property | 263,200 |
| Total | 3,308,748 |

### A. Contract losses

#### 1. Facts and contentions

97. Water & Power seeks compensation in the total amount of USD 3,045,548 for contract losses. As at August 1990, it was engaged as a contractor to perform works on five projects in Iraq. The projects were: Bekhme Dam Model Studies, Kifil Shinafiya Project Phase I, Kifil Shinafiya Project Phase II, Amarah Irrigation Project, and the Bakruman and Khalikan Project.

98. The contracts were signed between 1977 and 1989. The total prices of the contracts ranged from approximately IQD 110,000 to IQD 1,270,000. The Iraqi contracting parties included the State Commission for Irrigation and Land Reclamation, and the State Organisation of Dams.

99. Water & Power asserts that the Iraqi employers have not paid Water & Power a total of USD 3,045,548 for work performed on the five projects.

#### 2. Analysis and valuation

100. In support of its claim for contract losses, Water & Power provided copies of the contracts and copies of the invoices issued to the Iraqi employers.

101. The supporting documentation provided by Water & Power indicates that the work the subject of all of the invoices was performed prior to 2 May 1990. Accordingly, the claim for these unpaid amounts is outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687 (1991). Applying the approach taken with respect to

the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991), as set out in paragraphs 41 to 43 of the Summary, the Panel is unable to recommend compensation.

### 3. Recommendation

102. The Panel recommends no compensation for contract losses.

## B. Loss of tangible property

### 1. Facts and contentions

103. Water & Power seeks compensation in the amount of USD 263,200 for loss of tangible property. It asserts that assets and properties with a value of USD 263,200 were left behind in Iraq in Water & Power's office and at the Bekhme Dam project site. The property comprises equipment, tools and office equipment.

### 2. Analysis and valuation

104. The only evidence provided by Water & Power in support of its claim is an undated packing list addressed to the Ministry of Agriculture and Irrigation, Iraq which lists various items of property. The Panel finds that this list is not sufficient to substantiate the claim. Water & Power failed to prove that it owned these assets or that they were located in Iraq as at 2 August 1990. The Panel notes that work on the Bekhme Dam project, on which the equipment was allegedly being used, was completed in September 1989.

### 3. Recommendation

105. The Panel recommends no compensation for loss of tangible property.

## C. Summary of recommended compensation for Water & Power

Table 10. Recommended compensation for Water & Power

| Claim element | Claim amount (USD) | Recommended compensation (USD) |
|---|---|---|
| Contract losses | 3,045,548 | nil |
| Loss of tangible property | 263,200 | nil |
| Total | 3,308,748 | nil |

106. Based on its findings regarding Water & Power's claim, the Panel recommends no compensation.

## VII. JAPANESE CONSORTIUM OF CONSULTING FIRMS

107. Japanese Consortium of Consulting Firms ("JCCF") was established in 1985 for the purpose of undertaking "the study works of the Integrated Capital Development Plan for Baghdad". The study had been commissioned by Amanat Al Assima, the local city government authority of Baghdad. At 2 August 1990, JCCF was carrying out the Minimum Operational Level ("MOL") Study. JCCF asserts that Iraq's invasion and occupation of Kuwait interrupted the study.

108. JCCF seeks compensation in the amount of USD 7,079,065 for contract losses, payment or relief to others and financial losses.

Table 11. JCCF's claim

| Claim element | Claim amount (USD) |
|---|---|
| Contract losses | 2,899,597 |
| Payment or relief to others | 308,569 |
| Financial losses | 3,870,899 |
| Total | 7,079,065 |

### A. Contract losses

#### 1. Facts and contentions

109. JCCF seeks compensation in the amount of USD 2,899,597 for contract losses. The amount claimed is described as follows:

| | USD |
|---|---|
| Phase 1 | 822,578 |
| MOL Study USD portion | 1,716,810 |
| MOL Study IQD portion | 360,209 |
| Total | 2,899,597 |

110. JCCF performed the work the subject of the claim between April 1989 and October 1990.

#### 2. Analysis and valuation

111. In support of its claim for contract losses, JCCF provided a copy of the contract and a schedule of the invoices issued to the Iraqi employer. It did not provide the invoices themselves, nor any of the other supporting material requested in the article 34 notification.

112. The Panel finds that JCCF failed to provide sufficient evidence in support of its claim. The Panel is therefore unable to recommend compensation.

### 3. Recommendation

113. The Panel recommends no compensation for contract losses.

## B. Payment or relief to others

### 1. Facts and contentions

114. JCCF seeks compensation in the amount of USD 308,569 for payment or relief to others.

115. In the "E" claim form, JCCF characterised this loss element as "loss of earnings", but the Panel finds that it is more accurately described as payment or relief to others.

116. The claim is for salaries paid in respect of unproductive labour. JCCF asserts that seven of its engineers were forced to remain in Baghdad and continue working on the study between 2 August 1990 and 2 March 1991. It states that in ordinary circumstances the study would have been finished by mid-October 1990. It therefore claims compensation for the salaries paid to the engineers between 2 August 1990 and 2 March 1991.

### 2. Analysis and valuation

117. In support of its claim for payment or relief to others, JCCF only provided a schedule setting out such information as the names of the engineers, the engineering grade unit rate, and the invoice period. It did not provide evidence in support of the schedule.

118. The Panel finds that JCCF failed to provide sufficient evidence in support of its claim.

### 3. Recommendation

119. The Panel recommends no compensation for payment or relief to others.

## C. Financial losses

### 1. Facts and contentions

120. JCCF seeks compensation in the amount of USD 3,870,899 for financial losses, including (a) balance of Iraqi bank account (IQD 11,855, converted by the claimant to USD 36,851); and (b) bank interest and currency exchange losses (USD 3,834,048).

121. In the "E" claim form, JCCF characterised item (a) as a loss related to a business transaction, and item (b) as contract losses, but the Panel finds that they are more accurately described as financial losses.

122. In respect of item (a), balance of Iraqi bank account, JCCF asserts that it had an Iraqi dinar bank deposit with the Rafidain Bank, Iraq which was frozen in Baghdad due to an order of the Government of Iraq. JCCF asserts that the balance of this account, as at 31 October 1990, was IQD 11,855.

123. In respect of item (b), bank interest and currency exchange losses, JCCF asserts that the study project commenced in 1982, and was due to be completed within 14 months. However, for reasons attributable to the Iraqi employer, the project was delayed throughout the 1980s. JCCF asserts that the delays caused it to suffer losses. The losses were due to, first, the drop in the value of the Yen against the United States dollar during this period, and, second, the bank interest which it had to pay during this period.

### 2. Analysis and valuation

124. In respect of item (a), balance of Iraqi bank account, applying the approach taken with respect to loss of funds in bank accounts, set out in paragraphs 135 to 140 of the Summary, the Panel recommends no compensation for loss of funds in JCCF's bank account in Iraq.

125. In respect of item (b), bank interest and currency exchange losses, the Panel finds that the bank interest and currency exchange losses were incurred prior to Iraq's invasion and occupation of Kuwait, and were due to the delays allegedly caused by the Iraqi employer at this time. The losses were not directly caused by Iraq's invasion and occupation of Kuwait. The Panel is therefore unable to recommend compensation.

### 3. Recommendation

126. The Panel recommends no compensation for financial losses.

## D. Summary of recommended compensation for JCCF

Table 12. Recommended compensation for JCCF

| Claim element | Claim amount (USD) | Recommended compensation (USD) |
|---|---|---|
| Contract losses | 2,899,597 | nil |
| Payment or relief to others | 308,569 | nil |
| Financial losses | 3,870,899 | nil |
| Total | 7,079,065 | nil |

127. Based on its findings regarding JCCF's claim, the Panel recommends no compensation.

## VIII. MARUBENI CORPORATION

128. On 9 November 2000, the Commission received a notice of withdrawal of the claim by Marubeni Corporation from the Permanent Mission of Japan. In the light of this communication, the Panel issued a procedural order on 4 December 2000, pursuant to article 42 of the Rules, acknowledging the withdrawal and terminating the Panel's proceedings with respect to the claim by Marubeni Corporation.

## IX. ELEKTRIM TRADE COMPANY S.A.

129. Elektrim Trade Company S.A. ("Elektrim") is a corporation existing under the laws of Poland. It has supplied electrical equipment and services in Iraq and Kuwait since the 1970s. In the "E" claim form dated 11 October 1993, Elektrim sought compensation in the total amount of USD 3,856,672 for contract losses, loss of profits, loss of tangible property, and claim preparation costs. In its response to the article 34 notification dated 16 May 2000, it reduced the total claim amount to USD 2,672,886 (KWD 289,639 and USD 1,670,675, converted by the claimant to USD 2,669,928). The reduction reflected amounts received from the Kuwaiti Ministry of Communications in respect of one of the contracts (see paragraph 141, infra).

130. Elektrim also seeks compensation for interest on the principal amount of any award in an amount to be determined by the Commission. For the reasons stated in paragraph 58 of the Summary, the Panel makes no recommendation with respect to Elektrim's claim for interest.

131. The claim preparation cost element is in the amount of USD 174,668. Applying the approach taken with respect to claim preparation costs set out in paragraph 60 of the Summary, the Panel makes no recommendation for claim preparation costs.

Table 13. Elektrim's claim

| Claim element | Claim amount (USD) |
|---|---:|
| Contract losses | 2,102,387 |
| Loss of profits | 363,990 |
| Loss of tangible property | 31,841 |
| Claim preparation costs | 174,668 |
| Interest (no amount specified) | (--) |
| Total | 2,672,886 |

### A. Contract losses

132. Elektrim seeks compensation in the total amount of USD 2,102,387 (KWD 280,437 and USD 1,132,017, converted by the claimant to USD 2,099,524) for contract losses in Iraq and Kuwait. The claim is in respect of three different contracts. The Panel considers each in turn.

#### (a) Contract HT - 7/79 (State Organisation of Electricity, Iraq)

133. Elektrim seeks compensation in the amount of USD 836,239 for contract losses on Contract HT - 7/79. On 30 June 1980, Elektrim entered into a contract with the State Organisation of Electricity, Iraq ("SOE") for the

installation of electricity cables within a period of 15 to 19 months. The value of the contract was USD 27,520,977. The contract was delayed because of the war between Iran and Iraq and the works were completed in 1986. The SOE confirmed all invoices presented by Elektrim but paid only part of the amount due.

134. On 29 May 1989, Elektrim and SOE entered into an agreement by which Elektrim agreed to forego a portion of the amounts due to it in exchange for the remission of certain sums frozen since 1984 as a delay penalty. In July 1990, SOE informed Elektrim that a payment order had been sent to the Central Bank of Iraq for the amounts due to be remitted. Elektrim asserts that Iraq's invasion and occupation of Kuwait prevented the execution of the payment order.

135. The Panel finds that the documentation and explanations provided by Elektrim indicate that the debt in question arose in or before 1986. Accordingly, the claim is outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687 (1991). Applying the approach taken with respect to the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991), as set out in paragraphs 41 to 43 of the Summary, the Panel is unable to recommend compensation.

136. The Panel recommends no compensation for (a) Contract HT - 7/79 (State Organisation of Electricity, Iraq).

### (b) Contract No. 50 (Kirkuk Irrigation Project Administration, Iraq)

137. Elektrim seeks compensation in the amount of USD 295,778 for contract losses on Contract No. 50. On 14 September 1982 Elektrim entered into a contract with the Kirkuk Irrigation Project Administration ("KIPA") for the installation of an electrical network within a period of 14 months. The value of the contract was USD 7,537,660. The contract was delayed because of the war between Iran and Iraq and works were completed in mid-1986.

138. Elektrim asserts that the guarantee period expired in 1987, but Elektrim replaced part of the installation in November 1989 and KIPA "took delivery of the works" on 5 May 1990. Elektrim sent a final bill to KIPA on 30 June 1990. Elektrim asserts that it was informed by phone that a payment order had been sent by KIPA to its bank on 15 July 1990. However, it asserts that it was not paid due to Iraq's invasion and occupation of Kuwait.

139. The supporting documentation provided by Elektrim indicates that the performance that created the debt in question occurred prior to 2 May 1990. Accordingly, the claim is outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687 (1991). Applying the approach taken with respect to the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991), as set out in paragraphs 41 to 43 of the Summary, the Panel is unable to recommend compensation.

140. The Panel recommends no compensation for (b) Contract No. 50 (Kirkuk Irrigation Project Administration, Iraq).

(c) Contract No. 05-330/96526 (Ministry of Communications, Kuwait)

141. In the "E" claim form dated 11 October 1993, Elektrim sought compensation in the amount of USD 1,230,934 (KWD 355,740, converted by the claimant to USD 1,227,302) for contract losses on Contract No. 05-330/96526. In its response to the article 34 notification dated 16 May 2000, Elektrim reduced the claim amount to USD 970,370 (KWD 280,437, converted by the claimant to USD 967,507), stating that it had received the amount of USD 260,564 (KWD 75,303, converted by the claimant to USD 259,795) from the Ministry of Communications, Kuwait (the "Ministry").

142. On 7 December 1989, Elektrim entered into a contract with the Ministry for the installation and maintenance of a telephone network in the region of Mushrif and South Sabahiya. The value of the contract was KWD 783,432 (converted by the claimant to USD 2,702,839). The contract was to be completed within 12 months.

143. Elektrim asserts that it carried out orders to the value of KWD 431,750 prior to Iraq's invasion and occupation of Kuwait. The Ministry paid KWD 76,010, but Elektrim asserts that the invasion and occupation prevented the payment of KWD 355,740. It received KWD 75,303 "soon after" the submission of its Statement of Claim on 11 October 1993, leaving an outstanding amount of KWD 280,437.

144. Applying the approach taken with respect to claims for contract losses with non-Iraqi parties, as set out in paragraphs 61 to 63 of the Summary, the Panel finds that Elektrim did not demonstrate that the failure of the Ministry to pay the outstanding amount was directly caused by Iraq's invasion and occupation of Kuwait. There is no evidence that the Ministry became insolvent or otherwise ceased to exist as a direct result of Iraq's invasion and occupation of Kuwait. The payment of the amount of KWD 75,303 indicates that the failure to pay the remainder was not directly due to Iraq's invasion and occupation of Kuwait, but to the decision of the Ministry, whose reasons for failing to make the payment are not known.

145. The Panel recommends no compensation for (c) Contract No. 05-330/96526 (Ministry of Communications, Kuwait).

### Recommendation for contract losses

146. The Panel recommends no compensation for contract losses.

## B. Loss of profits

### 1. Facts and contentions

147. In the "E" claim form Elektrim sought compensation in the amount of USD 1,216,889 (KWD 351,681, converted by the claimant to USD 1,213,302) for lost earnings on Contract No. 05-330/96526 (see paragraphs 141 - 145, supra). In its response to the article 34 notification, Elektrim reduced the claim amount to USD 363,990, after having received a further payment from the Ministry. Elektrim asserts that Iraq's invasion and occupation of Kuwait prevented continuation of the contract, thereby depriving it of expected income in the claimed amount.

### 2. Analysis and valuation

148. The Panel finds that Elektrim did not provide sufficient evidence that Iraq's invasion and occupation of Kuwait was the cause of the non-resumption of Contract No. 05-330/96526. According to the documentation provided by Elektrim in support of its claim, the Ministry was still in existence in 1993. It appears to the Panel that the contract was not continued because of a commercial decision of one or both of the parties.

### 3. Recommendation

149. The Panel recommends no compensation for loss of profits.

## C. Loss of tangible property

### 1. Facts and contentions

150. Elektrim seeks compensation in the amount of USD 31,841 (KWD 9,202, converted by the claimant to USD 31,746) for loss of tangible property. On 8 August 1988, Elektrim entered into a contract with the Ministry for the installation and maintenance of a telephone network. Elektrim completed the installation of the network within 12 months and was continuing to service the network as and when requested by the Ministry when Iraq invaded Kuwait.

151. Elektrim asserts that its personnel were evacuated from Kuwait on 16 August 1990, abandoning property being used on the contract. The property comprised residential and office furniture and special technical equipment. In September 1991, Elektrim visited Kuwait but was unable to recover the lost property, or to determine the circumstances in which it had been lost.

### 2. Analysis and valuation

152. The Panel finds that Elektrim provided sufficient evidence to substantiate its claim for loss of tangible property. The documentation provided by Elektrim shows that the items were shipped to Kuwait in August 1988 and May 1989, and that Elektrim was still performing the contract at

the time of Iraq's invasion of Kuwait. A joint statement by three managers of Elektrim states that they visited the project office of Elektrim on 5 September 1991 and that all the furniture and equipment had disappeared. The Panel finds that the residual value of the property as at 2 August 1990 was KWD 7,614 (USD 26,346).

### 3. Recommendation

153. The Panel recommends compensation in the amount of USD 26,346 for loss of tangible property.

## D. Summary of recommended compensation for Elektrim

Table 14. Recommended compensation for Elektrim

| Claim element | Claim amount (USD) | Recommended compensation (USD) |
|---|---:|---:|
| Contract losses | 2,102,387 | nil |
| Loss of profits | 363,990 | nil |
| Loss of tangible property | 31,841 | 26,346 |
| Claim preparation costs | 174,668 | (--) |
| Interest (no amount specified) | (--) | (--) |
| Total | 2,672,886 | 26,346 |

154. Based on its findings regarding Elektrim's claim, the Panel recommends compensation in the amount of USD 26,346. The Panel finds the date of loss to be 2 August 1990.

## X. STOCK COMPANY IN MIXED PROPERTY "ISKRA" INZENERING

155. Stock Company in Mixed Property "Iskra" Inzenering ("Iskra") is a stock company existing under the laws of the Republic of Macedonia. Its principal business is the manufacture and assembly of "metal constructions". It claims that Iraq's invasion and occupation of Kuwait interrupted a number of projects which it was undertaking in Iraq. It seeks compensation in the total amount of USD 4,132,643 for contract losses.

Table 15. Iskra's claim

| Claim element | Claim amount (USD) |
|---|---|
| Contract losses | 4,132,643 |
| Total | 4,132,643 |

### A. Contract losses

156. Iskra seeks compensation in the total amount of USD 4,132,643 for contract losses.

157. In the "E" claim form, Iskra characterised USD 1,668,268 of this loss element as "loss related to a business transaction", but the Panel finds that it is more accurately described as contract losses.

158. The claim is divided into four groups of projects on which Iskra was engaged as a sub-contractor by the following contractor companies: (a) GP Pelagonija, Macedonia; (b) SGP Slovenia Ceste Tehnika Obnova, Ljubljana, Slovenia; (c) Metalna Maribor, Slovenia; and (d) IMP Metall Chemie, Austria and IMP Engineering, Slovenia. The name of the projects, the principal amount claimed and the amount of interest claimed is set out in table 16, infra.

Table 16. Iskra's claim for contract losses

| Project | Principal amount (USD) | Interest amount (USD) | Total (USD) |
|---|---|---|---|
| 1. GP Pelagonija | | | |
| P-85794 | 260,708 | 157,652 | 418,360 |
| P-85742 | 15,425 | 9,328 | 24,753 |
| P-B2 | 52,948 | 33,924 | 86,872 |
| P-85770 | 26,825 | 16,222 | 43,047 |
| P-85772 | 6,267 | 3,789 | 10,056 |
| P-500/4 | 3,943 | 2,526 | 6,469 |
| P-85481 | 619,222 | 374,448 | 993,670 |
| Sub-total | 985,338 | 597,889 | 1,583,227 |
| 2. SGP Slovenia | 150,135 | 67,703 | 217,838 |
| 3. Metalna | | | |
| Bekhme Dam | 243,538 | 64,968 | 308,506 |
| Badush Dam | 288,488 | 66,316 | 354,804 |
| Sub-total | 532,026 | 131,284 | 663,310 |
| 4. IMP | | | |
| Salaries | 100,505 | nil | 100,505 |
| Material | 150,610 | 34,601 | 185,211 |
| Lost business | 1,382,552 | nil | 1,382,552 |
| Sub-total | 1,633,667 | 34,601 | 1,668,268 |
| Total | 3,301,166 | 831,477 | 4,132,643 |

159. The Panel deals with each of the four project groups in turn. The Panel notes at the outset that much of the documentation provided by Iskra was untranslated, despite a specific request from the secretariat for English translations. In view of article 6 of the Rules, the Panel did not consider the untranslated documentation.

(a) Contracts with GP Pelagonija, Macedonia

160. Iskra seeks compensation in the amount of USD 1,583,227 for contract losses on seven projects on which Iskra was engaged as a sub-contractor by GP Pelangonija. The claim includes interest in the amount of USD 597,889.

161. The only information provided by Iskra was the name of the project, the principal amount claimed, the amount of interest claimed, and the period for which interest is claimed.

162. In support of its claim Iskra provided an untranslated contract and a number of untranslated handwritten documents which appear to be applications for payment.

163. The Panel finds that the work in relation to the contracts was performed prior to 2 May 1990. Indeed, most of the work was performed prior to 1 January 1986 and, in one case, prior to 1 January 1984. Accordingly, the claim is outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687 (1991). Applying the approach taken with respect to the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991), as set out in paragraphs 41 to 43 of the Summary, the Panel is unable to recommend compensation.

164. The Panel recommends no compensation for contract losses in respect of (a) GP Pelagonija, Macedonia.

### (b) Contracts with SGP Slovenia Ceste Tehnika Obnova, Ljubljana, Slovenia

165. Iskra seeks compensation in the amount of USD 217,838 (USD 150,135 plus USD 67,703 for 6 per cent per annum interest calculated from 1 October 1987 to 31 December 1993) for contract losses on "construction project P-700 Baghdad-Iraq" with SGP Slovenia Ceste Tehnika Obnova - Ljubljana.

166. Iskra asserts that it performed construction work with a value of USD 282,125. Iskra was paid USD 131,990 and states that it was due to receive the remaining USD 150,135 in ten half year annuities. However, Iskra asserts that because of Iraq's invasion and occupation of Kuwait it has not yet received the amount due.

167. In support of its claim Iskra provided an untranslated contract, a translation of a final account document for work executed to October 1988, and a translated minute dated 23 May 1989 indicating a balance due in the amount claimed.

168. The Panel concludes from the documentation provided by Iskra that the construction work giving rise to the debt in question was completed prior to 2 May 1990. Iskra's assertion that payment on the contract was due in ten half year annuities would mean that some of the annuities fell due on dates subsequent to 2 May 1990. However, Iskra has not provided sufficient evidence to enable the Panel to determine whether it has jurisdiction in respect of the contract, as set out in paragraphs 68 to 77 of the Summary.

169. In these circumstances, the Panel must find that the claim is not compensable under Security Council resolution 687 (1991). Applying the approach taken with respect to the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991), as set out in paragraphs 41 to 43 of the Summary, the Panel is unable to recommend compensation.

170. The Panel recommends no compensation for contract losses in respect of (b) SGP Slovenia Ceste Tehnika Obnova, Ljubljana, Slovenia.

(c) Contracts with Metalna Maribor, Slovenia

171. Iskra seeks compensation in the amount of USD 663,310 for contract losses on projects on which Iskra was engaged as a sub-contractor by Metalna Maribor, Slovenia. The claim is comprised of (i) the amount of USD 308,506 (USD 243,538 plus USD 64,968 for 6 per cent per annum interest calculated from 1 January 1990 to 31 December 1993) in respect of a contract for the manufacture of equipment for the Bekhme Dam project, and (ii) the amount of USD 354,804 (USD 288,488 plus USD 66,316 for 6 per cent per annum interest calculated from 30 June 1990 to 31 December 1993) in respect of a contract for the manufacture of equipment for the Badush Dam.

172. The only explanation provided by Iskra in relation to the claim is that the equipment was "manufactured but not delivered".

173. In support of its claim Iskra provided a translated contract dated 30 September 1989, two sets of minutes documenting the completion of the manufacture of the equipment dated 10 August and 16 September 1990, and a summary dated 17 February 1994 indicating a balance due to Iskra in the amount claimed.

174. Although little information was provided in relation to the claim, the Panel notes that the claimant seeks interest on amount (i) from 1 January 1990 and interest on amount (ii) from 30 June 1990. This indicates to the Panel that the equipment could not be delivered from these dates. As these dates are prior to Iraq's invasion and occupation of Kuwait, the Panel concludes that the failure to deliver the equipment was not directly caused by Iraq's invasion and occupation of Kuwait.

175. The Panel recommends no compensation for contract losses in respect of (c) Metalna Maribor, Slovenia.

(d) Contracts with IMP Metall Chemie, Austria, and IMP Engineering, Slovenia

176. Iskra seeks compensation in the amount of USD 1,668,268 for contract losses on a contract for the manufacture and export of equipment to Iraq for the contractors IMP Metall Chemie, Austria, and IMP Engineering, Slovenia.

177. Iskra states that it entered into a contract with IMP Metall Chemie for the manufacture of "metal construction" for the "construction project P-824" in Iraq. IMP Engineering, Slovenia was to export the equipment to Iraq.

178. Iskra asserts that 15 employees worked for three months on the project to complete the necessary documentation, and that it acquired 273,478 kilograms of material from Zelezara - Skopje to start the project. It also asserts that it refused orders from other customers.

179. When Iraq invaded Kuwait, work on the project stopped. Iskra seeks compensation for the salaries paid to its employees (USD 100,505), the material purchased (USD 150,610 and USD 34,601 for 6 per cent yearly interest calculated from 30 June 1990 to 31 December 1993), and lost business (USD 1,382,552).

180. In support of its claim, Iskra provided a translated contract dated 6 July 1990, the untranslated invoices from Zelezara-Skopje, and a facsimile dated 24 July 1990 from IMP Metall Chemie instructing Iskra to stop production on the contract.

181. The Panel finds that Iskra did not provide sufficient evidence in support of its claim. Whether or not the contract was terminated directly due to Iraq's invasion and occupation of Kuwait, as asserted by Iskra, Iskra provided no evidence of salary payments, nor that it paid for the materials supplied by Zelezara-Skopje, nor of the existence or value of the lost business.

182. The Panel recommends no compensation for contract losses in respect of (d) IMP Metall Chemie, Austria, and IMP Engineering, Slovenia.

### Recommendation for contract losses

183. The Panel recommends no compensation for contract losses.

## B. Summary of recommended compensation for Iskra

Table 17. Recommended compensation for Iskra

| Claim element | Claim amount (USD) | Recommended compensation (USD) |
|---|---|---|
| Contract losses | 4,132,643 | nil |
| Total | 4,132,643 | nil |

184. Based on its findings regarding Iskra's claim, the Panel recommends no compensation.

## XI. ENKA TEKNIK

185. Enka Teknik ("Enka") is a corporation existing under the laws of Turkey. The company carried on construction and engineering projects in Iraq from 1982. Its activities in Iraq were allegedly disrupted when Iraq invaded Kuwait. It seeks compensation in the total amount of USD 5,885,376 (1,240,486,060 Turkish liras (TRL), IQD 160,921, DEM 209,800 and USD 4,772,877, converted by the claimant to USD 5,800,738) for contract losses, loss of profits, loss of tangible property, financial losses and interest.

186. The interest element is in the amount of USD 199,410. For the reasons stated in paragraph 58 of the Summary, the Panel makes no recommendation with respect to Enka's claim for interest.

Table 18. Enka's claim

| Claim element | Claim amount (USD) |
|---|---:|
| Contract losses | 3,939,578 |
| Loss of profits | 937,861 |
| Loss of tangible property | 221,412 |
| Financial losses | 587,115 |
| Interest | 199,410 |
| Total | 5,885,376 |

### A. Contract losses

187. Enka seeks compensation in the amount of USD 3,939,578 (TRL 125,031,658, IQD 49,292, DEM 209,800 and USD 3,600,328, converted by the claimant to USD 3,938,927) for contract losses. The claim includes six loss items as set out in table 19, *infra*. The Panel deals with each loss item in turn. The Panel's recommendations for each loss item are set out in table 20, *infra*.

Table 19. Enka's claim for contract losses

| Loss item | Claim amount (USD) |
|---|---|
| Promissory notes | 3,340,978 |
| Progress payment (Um Qasr) | 180,785 |
| Progress payment (Failuja Cement) | 112,559 |
| Progress payment (Hamamalil) | 45,936 |
| "Advances and expenses of purchase orders with respect to Um Qasr contract" | 137,288 |
| Materials (Kufa Cement Factory) | 122,032 |
| Total | 3,939,578 |

(a) Promissory notes

188. Enka seeks compensation in the amount of USD 3,340,978 for losses incurred on promissory notes issued by the State Organisation of Industrial Projects of Iraq ("SOIP"). The claim is comprised of three amounts: (i) the principal amount of eleven promissory notes (USD 2,688,785); (ii) interest on another note dated 1 January 1987 (USD 89,049); and (iii) interest on the eleven notes (USD 563,144).

189. Enka entered into a contract with SOIP on 18 December 1985 for various works related to railway construction at the Kubaisa Cement Plant. The total contract value was USD 16,872,307.

190. In respect of item (i), the principal amount of eleven promissory notes, Enka asserts that a total of 11 promissory notes with a value of USD 2,688,785 remain unpaid. The notes are dated between 21 October 1987 and 1 March 1990. The maturity dates are two years later, i.e., between 21 October 1989 and 1 March 1992.

191. In respect of item (ii), interest on another note dated 1 January 1987, Enka asserts that the principal amount of the promissory note issued on 1 January 1987 was paid by SOIP, but interest in the amount of USD 89,049 was not.

192. In respect of item (iii), interest on the eleven notes, Enka asserts that SOIP has not paid interest in the amount of USD 563,144 on the 11 promissory notes referred to at paragraph 190, supra.

193. The Panel finds that the work in relation to the 11 promissory notes was performed prior to 2 May 1990. Under clause 4.6.2(1) of the contract, payment for the work was deferred for a period of two years after its completion. In the case of some of the invoices, this meant that payment

fell due on dates subsequent to 2 May 1990. However, applying the approach taken with respect to "old debt", as set out in paragraphs 68 to 77 of the Summary, the claim is outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687 (1991).

194. Therefore, applying the approach taken with respect to the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991), as set out in paragraphs 41 to 43 of the Summary, the Panel is unable to recommend compensation.

(b) Progress payment (Um Qasr)

195. Enka seeks compensation in the amount of USD 180,785 for an unpaid progress payment on the Um Qasr project. On 11 November 1989, Enka entered into a contract with the Iraqi Cement State Enterprise ("ICSE") for the construction of a rail tanker off-loading and cement silos feeding system. The total contract price was USD 1,943,000. Under the contract, ICSE was obliged to make an advance payment of USD 382,400. The contract was to be completed within 11 months of the date of receipt of the advance payment.

196. Enka asserts that it shipped materials to Iraq on 21 July 1990 and delivered the shipping documents to "PTT administration" on 2 August 1990 for despatch to the Rafidain Bank, Iraq. However, the documents could not be delivered to Iraq allegedly due to Iraq's invasion and occupation of Kuwait, and they were returned to Enka on 16 November 1990.

197. The Panel finds that the loss incurred in relation to the unpaid progress payment was directly due to Iraq's invasion and occupation of Kuwait. However, the contract provided for an advance payment of USD 382,400. Enka was asked in the article 34 notification, among other things, whether it had received any advance payments, and, if so, whether there were any amounts outstanding. The response received by the Commission did not answer this question in relation to this contract.

198. The Panel must assume that Enka received, and still retains, the advance payment. The amount of the advance payment (USD 382,400) is greater than the amount claimed (USD 180,785). Applying the approach taken with respect to advance payments, as set out in paragraph 67 of the Summary, the Panel is unable to recommend compensation.

(c) Progress payment (Failuja Cement)

199. Enka seeks compensation in the amount of USD 112,559 (IQD 35,006, converted by the claimant to USD 112,822) for an unpaid progress payment on the Failuja Cement project. On 9 January 1985, Enka entered into a contract with ICSE for various works, including preparation of a protective maintenance system, manufacturing of spare parts and supervision. There is no evidence of the total contract price. There is no evidence that there was any advance payment. Enka asserts that "the date of expiry of contract of phase-out term was April 1987".

200. Enka asserts that as at 31 December 1989, the amount receivable on the Failuja project was IQD 35,006. It asserts that a letter dated 30 October 1990 from ICSE instructed it to apply to the accounting department for payment. However, it states that "due [to] UN embargo decision we couldn't apply to the client".

201. The Panel finds that the work in relation to the unpaid progress payment was performed prior to 2 May 1990. Accordingly, the claim is outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687 (1991). Applying the approach taken with respect to the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991), as set out in paragraphs 41 to 43 of the Summary, the Panel is unable to recommend compensation.

(d) Progress payment (Hamamalil)

202. Enka seeks compensation in the amount of USD 45,936 (IQD 14,286, converted by the claimant to USD 46,070) for an unpaid progress payment on the Hamamalil project. Enka asserts that it entered into an arrangement with the Northern Cement State Enterprise, Iraq ("NCSE") by which the NCSE agreed to pay Enka IQD 2,500 per week per technician for advice on the furnace adjusting operations in the Hamamalil Cement Factory. There is no evidence that there was any advance payment. Advice was provided by Enka's technicians between 11 and 30 July 1990 to the value of IQD 14,286.

203. The Panel finds that the work that created the debt in question was performed after 2 May 1990 and that the debt is therefore within the jurisdiction of the Commission. The Panel further finds that the loss incurred in relation to the unpaid progress payment was directly due to Iraq's invasion and occupation of Kuwait.

204. However, the Panel must assume that Enka retains an advance payment of USD 382,400 in relation to the Um Qasr Contract (loss item (b)) (see paragraph 198, supra). Applying the approach taken with respect to advance payments, as set out in paragraphs 64 to 67 of the Summary, the Panel must take this advance payment into account with respect to Enka's entire claim for contract losses. This calculation appears at table 20, infra.

(e) "Advances and expenses of purchase orders with respect to Um Qasr contract"

205. Enka seeks compensation in the amount of USD 137,288 (TRL 116,071,812, DEM 110,294 and USD 23,565, converted by the claimant to USD 136,931) for "advances and expenses of purchase orders with respect to the Um Qasr contract". The claim includes three separate amounts allegedly payable to suppliers upon the cancellation of orders.

206. The amount of USD 23,565 was an advance payment made to Fuller International Inc., a United States corporation, for two compressors and

two pumps, which Enka states it lost when the Um Qasr contract was interrupted by Iraq's invasion and occupation of Kuwait.

207. The amount of TRL 116,071,812 was claimed by AEG Eti A.S., a Turkish corporation ("AEG Turkey"), against Enka, as damages for the cancellation of Enka's purchase order allegedly due to Iraq's invasion and occupation of Kuwait.

208. The amount of DEM 110,294 was claimed by AEG Lloyd Dynamowerke, a German corporation, against Enka, as damages for the cancellation of Enka's purchase order upon Iraq's invasion and occupation of Kuwait.

209. In relation to the advance payment made to Fuller Pumps, the Panel considers that the loss of an advance payment on a contract cancelled because of Iraq's invasion and occupation of Kuwait is a direct loss. The Panel finds that Enka provided sufficient evidence to substantiate its claim. It provided a copy of the contract with Fuller Pumps and evidence that it paid the advance payment. The contract provided that in the event of termination, the purchaser would be liable for 10 per cent of the contract price, costs and cancellation charges. Having considered the material presented to it, the Panel finds that Enka has suffered a loss directly resulting from Iraq's invasion and occupation of Kuwait in the amount of USD 23,565.

210. However, the Panel must assume that Enka retains an advance payment of USD 382,400 in relation to loss item (b) (see paragraph 198, supra). Applying the approach taken with respect to advance payments, as set out in paragraphs 64 to 67 of the Summary, the Panel must take this into account with respect to the claimant's entire claim for contract losses. This calculation appears at table 20, infra.

211. In respect of the amount of TRL 116,071,812 allegedly claimed by AEG Turkey, and the amount of DEM 110,294 allegedly claimed by AEG Lloyd Dynamowerke, Enka's response to a request for further information and evidence issued by the Commission makes it clear that Enka has not paid either of these amounts to the companies concerned. In the absence of such payment, Enka has not suffered a loss, and the Panel is unable to recommend compensation for these amounts.

### (f) Materials (Kufa Cement Factory)

212. Enka seeks compensation in the amount of USD 122,032 (TRL 8,959,846, DEM 99,506 and USD 55,000, converted by the claimant to USD 121,341) for the cost of materials purchased but not shipped for the Kufa Cement Factory.

213. Enka asserts that on 7 December 1989 it entered into a contract with the Iraqi State Enterprise for the supply of three kiln shells for the Kufa Cement Factory. One kiln shell was supplied and paid for on 19 April 1990. On 7 June 1990, Enka imported materials from Daval, France for the

remaining two kiln shells and delivered these to the manufacturers in Turkey. However, it was forced to suspend the manufacture due to the interruption of the contract for the Kufa Cement Factory.

214. The claim includes the amount claimed by the manufacturer for manufacturing and other services (USD 55,000), the cost of the material for the kiln shells (DEM 99,506), and the expenses of importing the material (TRL 8,959,846).

215. The Panel finds that the manufacture and intended export to Iraq of the second and third kilns was interrupted due to the disruption of shipping services caused by Iraq's invasion and occupation of Kuwait. The Panel finds that the costs thereby incurred were directly caused by Iraq's invasion and occupation of Kuwait.

216. However, the Panel finds that Enka substantiated its claim only in relation to the cost of the material for the kiln shells (DEM 99,506), and the expenses of importing the material (TRL 8,959,846). In relation to the amount claimed by the manufacturer, Enka provided no evidence that it paid the manufacturer the amount claimed.

217. Accordingly, the Panel finds that Enka has suffered a loss directly resulting from Iraq's invasion and occupation of Kuwait in the amount of USD 67,032 (DEM 99,506 and TRL 8,959,846).

218. However, the Panel must assume that Enka retains an advance payment of USD 382,400 in relation to loss item (b) (see paragraph 198, supra). Applying the approach taken with respect to advance payments, as set out in paragraphs 64 to 67 of the Summary, the Panel must take this into account with respect to the claimant's entire claim for contract losses. This calculation appears at table 20, infra.

## Recommendation for contract losses

219. Based on the Panel's findings regarding Enka's claim for contract losses, the calculation of the Panel's recommendation concerning contract losses is as follows:

Table 20. Enka's claim for contract losses (Panel's recommendation)

| Claim item | Claim amount (USD) | Recommended compensation (USD) |
|---|---|---|
| Promissory notes | 3,340,978 | nil |
| Progress payment (Um Qasr) | 180,785 | 180,785 |
| Progress payment (Failuja Cement) | 112,559 | nil |
| Progress payment (Hamamalil) | 45,936 | 45,936 |
| "Advances and expenses of purchases orders with respect to Um Qasr contract" | 137,288 | 23,565 |
| Materials (Kufa Cement Factory) | 122,032 | 67,032 |
| Less advance payment | (--) | (382,400) |
| Total | 3,939,578 | nil |

220. In view of the calculation in table 20, supra, the Panel recommends no compensation for contract losses.

## B. Loss of profits

### 1. Facts and contentions

221. Enka seeks compensation in the amount of USD 937,861 (TRL 500,394,295 and USD 752,000, converted by the claimant to USD 939,789) for loss of profits. The claim includes (a) overhead expenses (TRL 500,394,295, converted by the claimant to USD 187,789); (b) loss of profits on the Um Qasr project (USD 613,000); and (c) loss of profits on the Kufa Cement project (USD 139,000).

222. In relation to item (a), overhead expenses, Enka asserts that the overhead expenses include items such as salaries, premiums, housing remittance, etc. Enka provides no further information in relation to the claim. Enka does not explain how the costs were directly caused by Iraq's invasion and occupation of Kuwait.

223. In relation to item (b), loss of profits on the Um Qasr project, Enka calculated its loss of profits by subtracting the cost of materials and equipment, the cost of erection and supervision, and other expenses, from the total contract price.

224. In relation to item (c), loss of profits on the Kufa Cement project, Enka calculated its loss of profits by subtracting the cost of materials, the cost of transport, and other expenses, from the amount outstanding under the letter of credit.

### 2. Analysis and valuation

225. In support of item (a), overhead expenses, Enka provided a list of the items of overhead comprising the claim, and untranslated ledger accounts. In view of article 6 of the Rules, the Panel did not consider the untranslated accounts.

226. It provided no evidence in support of item (b), loss of profits on the Um Qasr project, or item (c), loss of profits on the Kufa Cement project.

227. The Panel finds that Enka failed to fulfil the evidentiary standard for loss of profits claims set out in paragraphs 125 to 131 of the Summary. Accordingly, the Panel recommends no compensation.

### 3. Recommendation

228. The Panel recommends no compensation for loss of profits.

## C. Loss of tangible property

### 1. Facts and contentions

229. Enka seeks compensation in the amount of USD 221,412 (IQD 68,859, converted by the claimant to USD 222,066) for loss of tangible property. The claim includes (a) fixed assets (IQD 50,947, converted by the claimant to USD 164,301) and (b) stocks (IQD 17,912, converted by the claimant to USD 57,765).

230. The claim for item (a), fixed assets, includes vehicles, office furniture and equipment. The evidence indicates that the property was confiscated by the Iraqi authorities in December 1992.

231. The claim for item (b), stocks, includes foodstuffs, work-clothes, stationary, spare parts and sundries. Enka does not explain how the stock was lost.

### 2. Analysis and valuation

232. In relation to item (a), fixed assets, the Panel finds that the property was confiscated by the Iraqi authorities in December 1992. Applying the approach taken with respect to the confiscation of tangible property by the Iraqi authorities after the liberation of Kuwait, as set out in paragraph 146 of the Summary, the Panel is unable to recommend compensation.

233. In relation to item (b), stocks, Enka provided accounts for its Iraqi branch dated 12 December 1989 showing the value of its stock. It provided

no evidence that the stock was in Iraq as at 2 August 1990 or that the stock was lost due to Iraq's invasion and occupation of Kuwait. Accordingly, the Panel is unable to recommend compensation for this portion of the claim.

### 3. Recommendation

234. The Panel recommends no compensation for loss of tangible property.

## D. Financial losses

235. Enka seeks compensation in the amount of USD 587,115 (TRL 615,060,107, IQD 42,770 and USD 221,139, converted by the claimant to USD 500,545) for financial losses. There are four items in the claim. The Panel deals with each item in turn.

### (a) Expenses of letters of guarantee

236. Enka seeks compensation in the amount of USD 107,133 (TRL 288,432,841, converted by the claimant to USD 29,890) for expenses relating to letters of guarantee. Enka does not explain its claim well. It merely states that it makes no claim for letters of guarantee issued with respect to works of Enka performed prior to 7 August 1990. However, it claims the following expenses and commissions paid for letters of guarantee issued between 7 August 1990 and 30 April 1993.

| | TRL |
|---|---|
| Iktisat Bankasi Mecidiyekoy Branch | 265,750,956 |
| Vakiflar Bankasi Taksim Branch | 3,695,958 |
| Is Bankasi Galata Branch | 15,555,713 |
| Esbank Mecidiyekoy Branch | 3,430,214 |
| Total | 288,432,841 |

237. The Panel finds that fees paid on letters of guarantee after 2 August 1990 may be directly caused by Iraq's invasion and occupation of Kuwait depending on the circumstances of the claim.

238. However, in support of its claim, Enka provided only correspondence dated 1992-1993 from branches of Turkish banks setting out the amount of expenses and commissions paid. It did not state in relation to which contracts the letters of guarantee were issued, nor the reason why the expenses and commissions continued to be paid after 7 August 1990. Accordingly, the Panel is unable to determine whether the fees paid by Enka were directly caused by Iraq's invasion and occupation of Kuwait and is therefore unable to recommend compensation.

239. The Panel recommends no compensation for item (a), expenses of letters of guarantee.

(b) Cash

240. Enka seeks compensation in the amount of USD 137,524 (IQD 42,770, converted by the claimant to USD 137,930) for the following cash amounts left in Iraq.

| | IQD |
|---|---|
| Enka Baghdad office (petty cash) | 510 |
| Al Rasheed Bank Mosul branch | 466 |
| Al Rasheed Bank Arasat branch | 41,794 |
| Total | 42,770 |

241. In support of its claim, Enka provided a petty cash record for the Baghdad office dated 12 July 1990, a bank account statement of the Mosul branch dated 1 January 1990, and a bank account statement of the Arasat branch dated 5 August 1990.

242. Applying the approach taken with respect to loss of funds in bank accounts and loss of petty cash in Iraq, set out in paragraphs 135 to 140 of the Summary, the Panel recommends no compensation for loss of cash.

243. The Panel recommends no compensation for item (b), cash.

(c) Interest on Turkish bank loans

244. Enka seeks compensation in the amount of USD 221,139 for interest paid on loans from the Turkish bank, Turkiye Is Bankasi. Enka states that it took the loans against the security of promissory notes (presumably issued by Iraqi employers) with due dates of 31 October, 5 November and 19 November, 1989. The promissory notes were not paid, with the consequence that Enka paid interest on the loans from the due date of the promissory notes until 30 June 1993 in the total amount of USD 221,139.

245. In support of its claim Enka provided a translation of a letter from the Turkish bank dated 6 May 1993 stating the total amount of interest paid with respect to the "Iraqi drafts received as guarantee to foreign currency loans".

246. The Panel finds that Enka failed to demonstrate a direct causal link between the interest paid on the loans taken from the Turkish bank and Iraq's invasion and occupation of Kuwait. Enka did not even state the contract(s) in relation to which the promissory notes were issued.

247. The Panel recommends no compensation for item (c), interest on Turkish bank loans.

(d) Interest on exports pre-financing loan

248. Enka seeks compensation in the amount of USD 121,319 (TRL 326,627,266, converted by the claimant to USD 111,586) for interest paid on an exports prefinancing loan from "Iktisat Bankasi Mecidiyekoy Branch with respect to Kufa kiln shell exportation". Enka asserts that the loan matured on 17 December 1990, but due to the inability to export the material to Iraq, the loan was extended to 19 June 1991. Enka states that it was thereby obliged to pay interest in the amount claimed.

249. In support of its claim, Enka provided a translation of a letter from Iktisat Bankasi dated 11 May 1993 stating the total interest paid with respect to "pre shipment Exports Eximbank Loan".

250. The Panel finds that Enka did not demonstrate a direct causal link between the interest paid on the exports prefinancing loan and Iraq's invasion and occupation of Kuwait. The Panel finds that the direct cause of the loss was Enka's commercial decision to extend the loan, which ultimately was a decision as to how to structure its financial affairs.

251. The Panel recommends no compensation for item (d), interest on exports pre-financing loan.

### Recommendation for financial losses

252. The Panel recommends no compensation for financial losses.

## E. Summary of recommended compensation for Enka

Table 21. Recommended compensation for Enka

| Claim element | Claim amount (USD) | Recommended compensation (USD) |
|---|---|---|
| Contract losses | 3,939,578 | nil |
| Loss of profits | 937,861 | nil |
| Loss of tangible property | 221,412 | nil |
| Financial losses | 587,115 | nil |
| Interest (no amount specified) | 199,410 | (--) |
| Total | 5,885,376 | nil |

253. Based on its findings regarding Enka's claim, the Panel recommends no compensation.

## XII. HSG ENGINEER CONTRACTOR HAYDAR SONER GÖRKER

254. HSG Engineer Contractor Haydar Soner Görker ("HSG") is a company existing under the laws of Turkey. It seeks compensation in the amount of USD 1,496,273 for contract losses.

255. HSG also seeks compensation for interest on the principal amount of any award at the rate of 8 per cent. For the reasons stated in paragraph 58 of the Summary, the Panel makes no recommendation with respect to HSG's claim for interest.

Table 22. HSG's claim

| Claim element | Claim amount (USD) |
|---|---|
| Contract losses | 1,496,273 |
| Interest (no amount specified) | (--) |
| Total | 1,496,273 |

### A. Contract losses

#### 1. Facts and contentions

256. HSG seeks compensation in the total amount of USD 1,496,273 for contract losses. On 16 December 1985, it entered into a sub-contract with the Al Jazira Contracting and Investment Company, Kuwait ("Al Jazira"), for remodelling of drains and roadworks for the Abu Ghraib Project of the Ministry of Agriculture and Agrarian Reforms of Iraq (the "Ministry"). HSG started work on the sub-contract and continued to work for a 10 month period (until October 1986) despite the fact that it was not being paid.

257. The sub-contract provided that the "court of Baghdad" should have exclusive jurisdiction in respect of all actions and proceedings arising out of the sub-contract. It further provided that any dispute or difference, if not susceptible of amicable settlement, was to be referred to arbitration. An arbitration committee was to be formed by the competent court.

258. On 7 January 1987, HSG, having unsuccessfully sought to persuade the Ministry to exercise its power of making a direct payment to HSG, referred the matter of the outstanding payments to a domestic arbitration under Iraq law. An arbitral tribunal was appointed by the authorised Court of Karrada, Iraq on 7 January 1987. The arbitral tribunal delivered its decision on 14 October 1990. It ordered Al Jazira to pay HSG "in hard currency outside Iraq" the amounts of USD 1,420,683 and KWD 21,910; and HSG to pay Al Jazira "inside Iraq" the amount of IQD 78,670.

259. On 13 April 1991, the Karrada Court of First Instance, Baghdad, approved the decision of the arbitral tribunal. The Court passed the following judgment:

(a) Al Jazira was ordered to pay HSG the sum of USD 1,420,683;

(b) HSG was ordered to pay Al Jazira the sum of IQD 78,670;

(c) "the competent Executive Department shall hand the [USD 1,420,683] to [HSG] after its payment by [Al Jazira] and after obtaining the approval of the competent authority at the Central Bank of Iraq and passing the approval of the said bank".

260. The Ministry of Justice signed and sealed the judgment on 6 June 1991. There was no appeal.

261. So far as the Panel can determine, Al Jazira was represented at part and possibly all of the arbitration, but not at the subsequent court "proceedings".

### 2. Analysis and valuation

262. The facts as asserted raise no issue about quantum. The matter which warrants discussion by the Panel is the compensability in principle of the claim. On the one hand, the initial non-payment of HSG by Al Jazira had nothing to do with Iraq's invasion and occupation of Kuwait. On the other hand, HSG has pursued the correct contractual course; which, by the time it was complete, had been overtaken, at least in time, by the invasion and occupation of Kuwait. It had also been overtaken by the liberation of Kuwait.

263. These circumstances throw up a number of issues for the Panel, all of which would have to be resolved in favour of HSG if the Panel was to be able to recommend compensation. One such issue for the Panel is whether it would have been possible to execute the decision of the court if Iraq's invasion and occupation of Kuwait had not taken place. The Panel notes that HSG has provided no evidence as to Al Jazira's present status or previous fate.

264. The documentation provided by HSG demonstrates the following:

(a) The original non-payment of HSG is wholly unrelated to the invasion and occupation of Kuwait.

(b) After the invasion and indeed after the liberation of Kuwait, HSG obtained a judgment against a company that may or may not exist.

(c) By the time the judgment was confirmed by the Ministry, Kuwait had been liberated.

(d) The judgment expressly placed the onus on the Ministry to secure the payment from Al Jazira. There is no apparent role for HSG.

265. In these circumstances, the Panel is invited to assume that:

(a) Had the invasion and occupation of Kuwait not occurred the judgment would have been met.

(b) The reason it was not possible to execute the judgment was because of the invasion and occupation of Kuwait and despite the liberation of Kuwait.

266. The Panel respectfully declines to make such assumptions in the absence of any material which can be said to support either of them. Accordingly, this issue must be resolved against HSG's claim. It is therefore unnecessary to consider the other issues which would have had to have been addressed had this issue been resolved in favour of HSG's claim.

### 3. Recommendation

267. The Panel recommends no compensation for contract losses.

## B. Summary of recommended compensation for HSG

Table 23. Recommended compensation for HSG

| Claim element | Claim amount (USD) | Recommended compensation (USD) |
|---|---|---|
| Contract losses | 1,496,273 | nil |
| Interest (no amount specified) | (--) | (--) |
| Total | 1,496,273 | nil |

268. Based on the Panel's findings regarding HSG's claim, the Panel recommends no compensation.

## XIII. GPT MIDDLE EAST LIMITED

269. GPT Middle East Limited ("GPT") is a corporation existing under the laws of the United Kingdom. It was formerly known as GEC Telecommunications (Overseas Services) Ltd. ("GECTOS"). On 2 November 1989 GECTOS entered into a contract with the Ministry of Transport and Communications, Iraq (the "Ministry") for the supply and installation of a digital radio link for the FAW Telecommunications Project (the "contract"). GPT asserts that the contract was interrupted by Iraq's invasion and occupation of Kuwait. GPT seeks compensation in the total amount of USD 1,432,112 (GBP 753,291) for contract losses.

Table 24. GPT's claim

| Claim element | Claim amount (USD) |
|---|---|
| Contract losses | 1,432,112 |
| Total | 1,432,112 |

### A. Contract losses

270. GPT seeks compensation in the total amount of USD 1,432,112 (GBP 753,291) for contract losses. The total value of the contract was USD 5,133,080 (GBP 2,700,000).

271. GPT asserts that it manufactured equipment, ordered equipment from other suppliers, and undertook the training services required under the contract in the months leading up to Iraq's invasion and occupation of Kuwait. The contract was interrupted when the invasion occurred, and has not been resumed since.

272. GPT seeks compensation in respect of the following items:

Table 25. GPT's claim for contract losses

| Claim item | Claim amount (USD) |
|---|---|
| Manufactured equipment | 339,888 |
| Equipment purchased | 847,116 |
| Services provided (training & site surveys) | 96,589 |
| Costs of bank guarantees | 27,778 |
| Costs of letter of credit confirmation | 207,224 |
| Less advance payment | (86,483) |
| Total | 1,432,112 |

273. The Panel deals with each item in turn.

(a) Manufactured equipment

274. GPT seeks compensation in the amount of USD 339,888 (GBP 178,781) for manufactured equipment. GPT describes the equipment as "Radio equipment", but does not provide any further detail.

275. GPT states that after Iraq's invasion and occupation of Kuwait, it received certain directives from the Ministry which caused it to suspend further manufacturing of the equipment. It states that it used some of the equipment on other projects, but could not re-allocate a considerable amount, which remained in the "Finished Goods Store".

276. GPT states that it performed a stocktake in November 1993, and deleted the items which could not be found during this stocktake from a list dated 28 November 1991 of the "projects book stock value". The items which remained on the list after the stocktake are the subject of this claim. GPT states that these items have no value except for scrap.

277. The Panel finds that GPT has not evidenced a clear link between equipment manufactured for the contract and the two stock lists - the original one in 1991 and the revised one in 1993. While it may be the case that some of the equipment still held by GPT in 1993 was equipment originally intended for the contract, there is no material which the Panel can use to identify that equipment. Furthermore there is no evidence that that equipment has no commercial value; nor is there any evidence of what the scrap value would be.

278. The Panel recommends no compensation for item (a), manufactured equipment.

(b) Equipment purchased from external suppliers

279. GPT seeks compensation in the amount of USD 847,116 (GBP 445,583) for equipment which was purchased from external suppliers in order to fulfil the contract. The equipment included such items as a frequency counter, aerials, a mobile generator and fuel tanks.

280. GPT states that following Iraq's invasion of Kuwait it cancelled further orders for equipment for the contract, and also asked the suppliers to repurchase equipment already purchased by GPT. It conducted a full stocktake of the equipment in January 1994 and the items found on this stocktake are the content of this claim.

281. GPT asserts that the equipment the subject of the claim was specially manufactured for the contract and cannot be utilised on other projects. It states that its present value is only as the proceeds of a scrap sale.

282. In support of its claim for equipment purchased from external suppliers, GPT provided invoices for the equipment from the suppliers. It

also provided proof of payment of some of the invoices, in the form of internal memoranda.

283. The Panel finds that GPT failed to provide sufficient evidence in support of its claim. GPT did not provide evidence that it attempted to use the equipment on other projects, or that it now has only scrap value.

284. The Panel recommends no compensation for item (b), equipment purchased from external suppliers.

(c) Services provided (training of Iraqi personnel and site surveys)

285. GPT seeks compensation in the amount of USD 96,589 (GBP 50,806) for services provided, including training of Iraqi personnel (USD 20,673; GBP 10,874) and site surveys (USD 75,916; GBP 39,932).

286. In respect of the training of Iraqi personnel, GPT was responsible, under the terms of the contract, for the training of the Ministry's personnel. GPT undertook some of the training at its premises but also arranged for training to be undertaken at other companies' sites in the United Kingdom. It asserts that it paid five different companies the total amount claimed for training, and has not been reimbursed by the Ministry for this amount.

287. In respect of the site surveys, GPT states that in order to fulfil the contract, comprehensive site surveys had to be undertaken in Iraq prior to the shipment and installation of the equipment. GPT employed the consulting group Marchant, Filer and Dixon to undertake the surveys. It subsequently paid the group GBP 39,932 for work performed. It asserts that it has not been reimbursed by the Ministry for the cost of the surveys.

288. In support of its claim for services, GPT provided invoices for the services from the companies concerned.

289. The Panel finds that GPT failed to provide sufficient evidence in support of its claim. GPT did not provide evidence that it paid the companies the amount claimed.

290. The Panel recommends no compensation for item (c), services provided.

(d) Costs of bank guarantees

291. GPT seeks compensation in the amount of USD 27,778 (GBP 14,611) for commission and insurance paid on an advance payment bond (GBP 405,235 plus IQD 22,108; later amended by deleting the Pounds sterling value) and a performance bond (GBP 189,818) required to be issued by the Ministry in respect of the contract in November 1989.

292. The commission was paid to the Gulf International Bank ("GIB") in respect of its own charges and those raised by Rafidain Bank for the

provision of these two bonds. The insurance was with Lloyd's and was against unfair calling of the bonds.

293. The payments commenced in late 1989 and continued until February 1995. The basis of claim is that the sums paid out would have been recovered through the payments under the contract.

294. However, it is clear that the project was initially very slow to get off the ground - see in this context, the comments of the Panel on the claims for the "reservation" costs for the proposed irrevocable letter of credit at paragraph 300, infra.

295. Accordingly, it cannot be said that the non-recovery of the initial payments made in respect of these two bonds were the result of Iraq's invasion and occupation of Kuwait. GPT took a commercial risk and set up the bonds despite the possibility that the project might never go ahead.

296. Given the absence of a causative link between the costs of the bank guarantees and Iraq's invasion and occupation of Kuwait, the Panel is unable to recommend compensation for item (d), costs of bank guarantees.

### (e) Costs of letter of credit confirmation

297. GPT seeks compensation in the amount of USD 207,224 (GBP 109,000) for costs incurred in respect of the confirmation of an irrevocable letter of credit. GPT states that it accepted the contract with the Ministry in 1989 against a confirmed irrevocable letter of credit. The initial cost of reservation was GBP 40,000 and it paid three subsequent reservation fees of GBP 23,000 each when the Ministry failed to raise the letter of credit. It paid the last reservation fee in March 1990.

298. Upon Iraq's invasion and occupation of Kuwait, GIB notified GPT that the confirmation was withdrawn. Accordingly, GPT seeks compensation for the costs associated with the letter of credit, which GPT asserts would normally be recovered as part of the contract price.

299. In support of its claim for the costs incurred, GPT provided correspondence between itself and GIB showing the confirmation and extension of the letter of credit.

300. The Panel finds that the costs incurred in respect of the irrevocable letter of credit were not directly caused by Iraq's invasion and occupation of Kuwait. The last reservation fee was paid in March 1990. This indicates to the Panel that the reason for the payment of the additional fees was not Iraq's invasion and occupation of Kuwait, but the failure of the Ministry, for an unrelated reason in early 1990, to issue the letter of credit at the time required.

301. The Panel recommends no compensation for item (e), irrevocable letter of credit confirmation costs.

### Recommendation

302. The Panel recommends no compensation for contract losses.

## B. Summary of recommended compensation for GPT

Table 26. Recommended compensation for GPT

| Claim element | Claim amount (USD) | Recommended compensation (USD) |
|---|---|---|
| Contract losses | 1,432,112 | nil |
| Total | 1,432,112 | nil |

303. Based on its findings regarding GPT's claim, the Panel recommends no compensation.

## XIV. ROZBANK ENGINEERING LTD

304. Rozbank Engineering Ltd ("Rozbank") is a corporation existing under the laws of the United Kingdom. On 10 September 1989, it entered into a contract with the State Company for Drug Industries, Iraq ("SDI") for the supply of five lifts, and spare parts over a two year period (the "contract"). Rozbank asserts that the contract was interrupted by Iraq's invasion and occupation of Kuwait. It seeks compensation in the amount of USD 361,217 (GBP 190,000) for loss of profits.

305. Rozbank also lodged a claim "in the alternative" in the amount of USD 56,610 (GBP 29,777) for actual costs incurred (USD 47,105; GBP 24,777) and administration costs (USD 9,505; GBP 5000).

Table 27. Rozbank's claim

| Claim element | Claim amount (USD) |
|---|---|
| Loss of profits | 361,217 |
| Total | 361,217 |

### A. Loss of profits

### 1. Facts and contentions

306. Rozbank seeks compensation in the total amount of USD 361,217 (GBP 190,000) for loss of profits under the contract. The total value of the contract was GBP 680,000. The contract was financed by a credit line established between Midland Montagu Trade Finance, London, and the Rafidain Bank, Baghdad. The Export Credits Guarantee Department ("ECGD") guaranteed payment by the Rafidain Bank for a premium of GBP 69,360.

307. On 1 December 1989, Rozbank sent a letter of intent to a supplier, Express Lift Company ("Express Lifts"), a company incorporated in the United Kingdom, advising that it would order the five lifts as soon as the ECGD and Midland Bank had clarified certain outstanding matters concerning the financing. The parties agreed to ship standard items to Iraq in August 1990 and make the final shipment towards the end of 1990.

308. On 15 May 1990, the Midland Bank advised Rozbank that the ECGD had approved the financing of the lifts contract, specifying 30 September 1990 as the last date of drawings. However, before the first shipment could be made, Iraq invaded Kuwait. Midland Montagu withdrew the credit facility and Rozbank states that it had no choice but to cancel its order with Express Lifts. Express Lifts had already purchased and received special motors from Germany to be incorporated into the lifts. Rozbank states that it was forced to meet the costs of Express Lifts, which amounted to GBP 29,145.

309. The ECGD made an ex gratia payment to Rozbank in the amount of GBP 52,000, but retained GBP 17,000 of the premium paid.

310. The amount of GBP 190,000 for gross profit is calculated as follows:

| | GBP |
|---|---|
| Contract price | 680,000 |
| Lift/spares purchase price | (173,000) |
| Difference | 507,000 |
| ECGD premium and bank charges | (71,000) |
| Bank interest (loan)/arrange fee | (21,000) |
| Estimated shipping costs | (8,000) |
| ECGD guarantee | (17,000) |
| Overseas contractors' installation fee | (200,000) |
| Gross profit | 190,000 |

311. Rozbank filed an alternative claim in which it seeks compensation in the amount of USD 47,105 (GBP 24,777) for actual costs incurred and in the amount of USD 9,505 (GBP 5,000) for "administration costs".

312. The claim for actual costs incurred is calculated as follows:

| | GBP |
|---|---|
| Net payments to Express Lifts and ECGD | 46,485 |
| Bank interest and charges | 12,292 |
| Total | 58,777 |
| Less advance payment from SDI | (34,000) |
| Total | 24,777 |

313. Rozbank provided no explanation or evidence in relation to the claim for administration costs.

314. Rozbank states that after the trade embargo against Iraq came into force, SDI requested that Rozbank execute its order. However, on 6 March 1992, Rozbank's application for an export licence from the Department of Trade and Industry of the United Kingdom was refused.

### 2. Analysis and valuation

315. In support of its claim for loss of profits, Rozbank provided the purchase order from SDI, and documentation from Express Lifts, the Rafidain bank, Midland Montagu Bank, and the ECGD.

316. The Panel finds that Rozbank was prepared to ship the lifts and spare parts to Kuwait on or about August 1990 and this could not be achieved due to Iraq's invasion and occupation of Kuwait.

317. However, applying the evidentiary standard for loss of profits claims set out in paragraphs 125 to 131 of the Summary, the Panel finds that Rozbank did not provide sufficient evidence to enable the Panel to assess the net loss of profits on the contract. In particular, Rozbank did not provide sufficient evidence of the costs which would have been incurred in performance of the contract.

318. Accordingly, the Panel recommends compensation for the alternative claim in the amount of GBP 24,777 (USD 47,105) for the actual costs incurred.

319. Given the lack of information, the Panel is unable to recommend compensation for "administration costs".

### 3. Recommendation

320. The Panel recommends compensation in the amount of USD 47,105 for loss of profits.

## B. Summary of recommended compensation for Rozbank

Table 28. Recommended compensation for Rozbank

| Claim element | Claim amount (USD) | Recommended compensation (USD) |
|---|---|---|
| Loss of profits | 361,217 | 47,105 |
| Total | 361,217 | 47,105 |

321. Based on the Panel's findings regarding Rozbank's claim, the Panel recommends compensation in the amount of USD 47,105. The Panel finds the date of loss to be 2 August 1990.

## XV. MEDICAL CONSULTANTS INTERNATIONAL, INC. (TRADING AS MEDCON ENTERPRISES)

322. Medical Consultants International, Inc. (trading as Medcon Enterprises)("Medcon") is a corporation existing under the laws of the United States of America. On 4 April 1990, Medcon entered into a contract with the Al-Fao General Contracting Establishment, Iraq ("Al-Fao") for the design and installation of a sheet metal fabricating duct shop (the "contract"). The total value of the contract was USD 865,062. Medcon asserts that it was unable to perform the contract due to Iraq's invasion and occupation of Kuwait. It seeks compensation in the total amount of USD 444,074 for contract losses, loss of profits, and other losses (legal fees).

Table 29. Medcon's claim

| Claim element | Claim amount (USD) |
|---|---|
| Contract losses | 124,710 |
| Loss of profits | 215,000 |
| Other losses (legal fees) | 104,364 |
| Total | 444,074 |

### A. Contract losses

### 1. Facts and contentions

323. Medcon seeks compensation in the total amount of USD 124,710 for contract losses. The claim includes (a) loss of deposit (USD 27,210) and (b) judgment in favour of Engel Industries (USD 97,500).

324. In the "E" claim form, Medcon characterised item (a) as "other losses" and item (b) as "payment or relief to others", but the Panel finds that they are more accurately described as contract losses.

325. In respect of item (a), loss of deposit, Medcon states that, on 27 July 1990, it paid a deposit of USD 27,210 to Engel Industries, United States, a manufacturer of sheet metal machinery, for the completion of "general assembly drawings of specially manufactured machinery". Medcon asserts that Iraq's invasion and occupation of Kuwait prevented it from shipping any equipment to Iraq. It therefore sought to recover the deposit from Engel Industries. However, Engel Industries refused to refund it. Medcon further states that it has not been able to collect the deposit from its Iraqi client.

326. In respect of item (b), judgment in favour of Engel Industries, Medcon states that on, 2 June 1992, a judgment was issued by the United States District Court for the District of Columbia against Medcon in favour of

Engel Industries. Engel Industries filed suit against Medcon claiming that Medcon should take possession of, and pay for, the equipment contracted for.

## 2. Analysis and valuation

327. In support of its claim for contract losses, Medcon provided a copy of the contract between Medcon and Al-Fao, the relevant letters of credit, a copy of the District Court judgment in favour of Engel Industries and a copy of the settlement and release agreement dated 24 November 1993 by which Medcon agreed to pay Engel the amount claimed.

328. It is clear from the material provided by Medcon that it commenced proceedings against Engel Industries to recover the deposit paid. Engel Industries, in its turn, cross claimed for the value of work ordered by Medcon and executed by Engel Industries but neither paid for nor collected by Medcon.

329. Other parties were joined to the proceedings, in particular the UBAF Arab American Bank (the "Bank"). The Bank had confirmed the normal letter of credit issued by an Iraqi bank on behalf of Al-Fao.

330. In the first of two judgments, the United States District Court for the District of Columbia, inter alia, found for Engel Industries against Medcon in the sum of USD 148,000. In the second of the two judgments the Court recorded that the Office of Foreign Assets Control had determined that the letter of credit (and the collateral posted with the Bank by the Iraqi bank) were both blocked property. However, the Court went on to hold that Medcon was entitled to recover against the Bank because the latter, by its confirmation of the letter of credit, undertook liability in its own right.

331. The Court accordingly, inter alia, entered judgment in favour of Medcon against the Bank. Thereafter the parties lodged appeals and entered into settlement discussions. The latter were successful and on 24 November 1993 the parties, including Medcon and the Bank, executed a settlement and release agreement.

332. Prima facie, once a claimant's claims are settled, no claim remains to be pursued. In that event, it is necessary to review the filed material to ascertain if there is any basis which displaces the prima facie view. Absent such material, Medcon has not established a loss and, therefore, the Panel is unable to recommend compensation.

## 3. Recommendation

333. The Panel recommends no compensation for contract losses.

## B. Loss of profits

334. Medcon seeks compensation in the amount of USD 215,000 for loss of future profits under the contract.

335. In the "E" claim form, Medcon characterised this loss element as "contract losses", but the Panel finds that it is more accurately described as loss of profits.

336. Medcon states that as at 2 August 1990, freight forwarders advised that, due to Iraq's invasion and occupation of Kuwait, no goods were being shipped to the Middle East, and therefore it could not perform the contract.

337. Medcon does not explain how it calculated its loss of profits. It merely states that the calculation is based on the actual projected margin of profit built into its total contract price. The calculation took into account the actual contract sell price, less the cost of goods sold.

338. In support of its claim for loss of profits, Medcon provided a statement of its Executive Vice President stating that the calculation was based on the profit margin built into the contract price, and the evidence described at paragraph 327, supra.

339. The Panel finds that Medcon failed to fulfil the evidentiary standard for loss of profits claims set out in paragraphs 125 to 131 of the Summary. Accordingly, the Panel recommends no compensation for loss of profits.

## C. Other losses

340. Medcon seeks compensation in the amount of USD 104,364 for other losses. The claim is for legal fees and includes (a) legal fees incurred in the action to recover the deposit from Engel Industries (USD 8,079), and (b) additional and current legal fees (USD 96,285) incurred in relation to the legal proceedings brought by Engel Industries. Medcon did not provide any breakdown of the legal fees.

341. In support of its claim for other losses, Medcon provided invoices from the law firms from which it sought advice.

342. The Panel finds that Medcon did not demonstrate a direct causal link between the legal fees and Iraq's invasion and occupation of Kuwait. The fees were incurred due to the commercial decision of Medcon to bring, and defend, legal proceedings in respect of the non-fulfilment of its contract.

343. The Panel recommends no compensation for other losses.

### D. Summary of recommended compensation for Medcon

Table 30. Recommended corpensation for Medcon

| Claim element | Claim amount (USD) | Recommended compensation (USD) |
|---|---|---|
| Contract losses | 124,710 | nil |
| Loss of profits | 215,000 | nil |
| Other losses (legal fees) | 104,364 | nil |
| Total | 444,074 | nil |

344. Based on the Panel's findings regarding Medcon's claim, the Panel recommends no compensation.

## XVI. NA PENTA INC.

345. NA Penta Inc. ("Penta") is a corporation existing under the laws of the United States of America. On 11 August 1988, it entered into a contract with the Ur State Enterprise for Engineering Industries, Iraq ("Ur State Enterprise") for the supply and delivery of an extrusion press (the "contract"). The contract also required the supply of spare parts, the provision of training, the provision of technical documentation and commissioning. The total value of the contract was USD 3,639,700.

346. Penta asserts that the contract was not completed due to Iraq's invasion and occupation of Kuwait. It seeks compensation in the amount of USD 482,440 for contract losses.

Table 31. Penta's claim

| Claim element | Claim amount (USD) |
|---|---:|
| Contract losses | 482,440 |
| Total | 482,440 |

### A. Contract losses

#### 1. Facts and contentions

347. Penta seeks compensation in the amount of USD 482,440 for contract losses. The claim includes 5 per cent of the contract price payable on the issue of the take-over certificate (USD 181,985), 5 per cent of the contract price payable on the issue of the final acceptance certificate (USD 181,985) and USD 118,470 payable in respect of overtime performed on the contract.

348. Penta asserts that it performed the work in relation to, and was paid, 90 per cent of the contract price. Five per cent of the contract price was payable on issue of the "plant take over certificate", and a further 5 per cent of the contract price was payable on the issue of the final acceptance certificate.

349. Pursuant to article 13 of the contract, the take-over certificate was to be issued after a successful test run of the installed machinery. Pursuant to article 14 of the contract, the final acceptance certificate was to be issued after the expiration of a 12 month warranty period and after it had been successfully demonstrated that the equipment operated as a complete system. Penta asserts that Iraq's invasion and occupation of Kuwait rendered impossible these events.

350. In relation to the claim for overtime (USD 118,470), the contract provided for payment of overtime as follows:

(a) USD 550 per day for man/days in excess of 75 days for performance of the contract work;

(b) USD 110 per hour for additional time in excess of six working days per week from 8.00 am to 4:30 p.m.;

(c) USD 110 per hour for work performed on Friday.

### 2. Analysis and valuation

351. In support of its claim for contract losses, Penta provided a copy of the contract dated 11 August 1988, copies of the correspondence establishing the letter of credit, and copies of the invoices (both paid and unpaid). Penta did not respond to the article 34 notification requesting further information.

352. Based on the evidence provided by Penta, the Panel finds that the 5 per cent of the contract price due upon the issue of the take-over certificate is a debt due and owing prior to 2 May 1990. This portion of the claim is outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687 (1991). Applying the approach taken with respect to the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991), as set out in paragraphs 41 to 43 of the Summary, the Panel is unable to recommend compensation for this amount.

353. The Panel finds that Penta did not provide sufficient evidence to enable the Panel to determine whether Penta became entitled to the final acceptance certificate after 2 May 1990. The Panel notes that the equipment was due to be delivered by December 1988, and that the contract designated 75 days to cover installation and commissioning of the equipment, and training of the personnel of Ur State Enterprise. In the absence of further evidence, the Panel must assume that the amount claimed is a debt due and owing prior to 2 May 1990, and is therefore unable to recommend compensation for this amount.

354. The Panel finds that, according to the terms of the contract, Penta was entitled to payment for overtime only if the overtime was not due to the fault of Penta. As Penta provided no evidence that this was the case, the Panel is unable to recommend compensation for the overtime. In any case, the Panel notes that most of the overtime was performed prior to 2 May 1990, and is therefore outside the jurisdiction of the Commission.

### 3. Recommendation

355. The Panel recommends no compensation for contract losses.

## B. Summary of recommended compensation for Penta

Table 32. Recommended compensation for Penta

| Claim element | Claim amount (USD) | Recommended compensation (USD) |
|---|---|---|
| Contract losses | 482,440 | nil |
| Total | 482,440 | nil |

356. Based on its findings regarding Penta's claim, the Panel recommends no compensation.

## XVII. XYZ OPTIONS, INC.

357. XYZ Options, Inc. ("XYZ") is a corporation existing under the laws of the United States of America. On 20 October 1988, it entered into a contract with the Machinery Trade Company, an Iraqi company ("MTC"), for the construction of a carbide cutting tool factory in Yousifiya, Iraq (the "contract"). The contract was almost completed at the time of Iraq's invasion and occupation of Kuwait. XYZ asserts that MTC has not paid retention monies amounting to 15 per cent of all invoices issued under the contract. It also asserts that it lost a vehicle and a trailer when Iraq invaded Kuwait in August 1990.

358. In the "E" claim form dated 25 October 1994, XYZ sought compensation in the total amount of USD 1,850,732 for contract losses and loss of tangible property.

359. On 28 April 1994, creditors of XYZ filed a bankruptcy petition against XYZ. On 30 November 1999, the United States District Court for the District of Alabama entered an order for a settlement agreement which provided, inter alia, that all of XYZ's rights under the contract, including its claim before the Commission, were assigned to an individual. In this report, references to XYZ include the individual assignee.

360. On 3 March 2000, in its response to the article 15 notification, XYZ reduced its claim amount to USD 1,788,963. The reduction in the claim amount is to take account of a portion of the advance payment under the contract still retained by XYZ (see paragraph 364, infra).

Table 33. XYZ's claim

| Claim element | Claim amount (USD) |
|---|---|
| Contract losses | 1,767,434 |
| Loss of tangible property | 21,529 |
| Total | 1,788,963 |

### A. Contract losses

#### 1. Facts and contentions

361. XYZ seeks compensation in the amount of USD 1,767,434 for contract losses. The scheduled completion date of the contract was 20 October 1990. XYZ asserts that at the time of Iraq's invasion and occupation of Kuwait, 99 per cent in dollar value of all machinery, supplies, and freight had been delivered under the contract, and over 50 per cent of the service and training portion of the contract had been completed.

362. XYZ further asserts that at the time of Iraq's invasion and occupation of Kuwait it was within 60 days of receiving the preliminary acceptance certificate but, due to Iraq's invasion and occupation of Kuwait, both the preliminary acceptance certificate and the final acceptance certificate will never be issued.

363. The total amount of the invoices issued by XYZ to MTC for machinery was USD 12,194,685. Fifteen per cent (USD 1,829,203) was withheld for retention monies which would have been payable on issue of the preliminary acceptance certificate and the final acceptance certificate.

364. XYZ admits that it retains USD 63,012 of the advance payment. Accordingly, XYZ seeks compensation for the amount of retention monies withheld by MTC, less the USD 63,012 of the advance payment still held by XYZ.

### 2. Analysis and valuation

365. In support of its claim for contract losses, XYZ provided a copy of the contract between XYZ and MTC, a letter of credit issued by the Banca Nazionale del Lavoro and copies of the invoices paid by MTC.

366. The Panel finds that the documentation provided by XYZ shows that a substantial part of the contract had been completed at the time of Iraq's invasion and occupation of Kuwait. There is no indication that the contract would not have been successfully completed had the invasion and occupation not ensued.

367. The contract and the invoices show that 15 per cent of the amount of the invoices rendered was withheld as retention monies. The Panel finds that non-payment of the retention monies was directly caused by Iraq's invasion and occupation of Kuwait.

368. However, the Panel further finds that in executing the completion and maintenance of the contract, XYZ would itself have incurred costs. After allowing for such costs, applying the principles relating to retention monies, as set out in paragraphs 78 to 84 of the Summary, the Panel estimates that the proper value of the claim is USD 1,116,977.

### 3. Recommendation

369. The Panel recommends compensation in the amount of USD 1,116,977 for contract losses.

## B. Loss of tangible property

### 1. Facts and contentions

370. XYZ seeks compensation in the amount of USD 21,529 for loss of tangible property.

371. XYZ asserts that upon Iraq's invasion and occupation of Kuwait, it was forced to abandon at the project site a "S-15, 1989 GMC vehicle" valued at USD 17,029 and an "office trailer" valued at USD 4,500.

### 2. Analysis and valuation

372. In support of its claim for tangible property losses XYZ provided evidence of ownership of the property, and of the fact that the property was shipped to Iraq in July 1989. The Panel finds that XYZ was still performing the contract at the time of the invasion and finds that the property was lost at this time as a direct result of Iraq's invasion and occupation of Kuwait.

373. After taking into account depreciation, the Panel values the property at USD 16,800.

### 3. Recommendation

374. The Panel recommends compensation in the amount of USD 16,800 for loss of tangible property.

## C. Summary of recommended compensation for XYZ

Table 34. Recommended compensation for XYZ

| Claim element | Claim amount (USD) | Recommended compensation (USD) |
|---|---|---|
| Contract losses | 1,767,434 | 1,116,977 |
| Loss of tangible property | 21,529 | 16,800 |
| Total | 1,788,963 | 1,133,777 |

375. Based on its findings regarding XYZ's claim, the Panel recommends compensation in the amount of USD 1,133,777. The Panel finds the date of loss to be 2 August 1990.

## XVIII. SUMMARY OF RECOMMENDED COMPENSATION BY CLAIMANT

Table 35. Recommended compensation for the seventeenth instalment

| Claimant | Claim amount (USD) | Recommended compensation (USD) |
|---|---:|---:|
| Bureau Veritas, Registre International de Classification de Navires et d'Aéronefs | 1,406,944 | 7,573 |
| Thyssen Rheinstahl Technik GmbH | 4,648,563 | 4,442,917 |
| AK India International Private Limited | 3,158,789 | 94,537 |
| Dodsal Limited | 3,234,298 | nil |
| Water and Power Consultancy Services (India) Limited | 3,308,748 | nil |
| Japanese Consortium of Consulting Firms | 7,079,065 | nil |
| Elektrim Trade Company S.A. | 2,672,886 | 26,346 |
| Stock Company in Mixed Property "Iskra" Inzenering | 4,132,643 | nil |
| Enka Teknik | 5,885,376 | nil |
| HSG Engineer Contractor Haydar Soner Görker | 1,496,273 | nil |
| GPT Middle East Limited | 1,432,112 | nil |
| Rozbank Engineering Ltd | 361,217 | 47,105 |
| Medical Consultants International, Inc. (trading as Medcon Enterprises) | 441,074 | nil |
| NA Penta Inc. | 482,440 | nil |
| XYZ Options, Inc. | 1,788,963 | 1,133,777 |

Geneva, 5 December 2000

(Signed) Pierre Genton
Commissioner

(Signed) Vinayak Pradhan
Commissioner

(Signed) John Tackaberry
Chairman

## Annex

## SUMMARY OF GENERAL PROPOSITIONS

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## Introduction

1. In the Report and Recommendations Made by the Panel of Commissioners Concerning the Fourth Instalment of "E3" Claims (S/AC.26/1999/14) (the "Fourth Report"), this Panel set out some general propositions based on those claims which had come before it and the findings of other panels of Commissioners contained in their reports and recommendations. Those propositions, as well as some observations specific to the claims in the fourth instalment of "E3" claims, are to be found in the introduction to the Fourth Report (the "Preamble").

2. The Fourth Report was approved by the Governing Council in its decision 74 (S/AC.26/Dec.74 (1999)); and the claims that this Panel has subsequently encountered continue to manifest the same or similar issues. Accordingly, the Panel has revised the Preamble, so as to delete the specific comments, and thus present this Summary of General Propositions (the "Summary"). The Summary is intended to be annexed to, and to form part of, the reports and recommendations made by this Panel. The Summary should facilitate the drafting, and reduce the size, of this Panel's future reports, since it will not be necessary to set matters out in extenso in the body of each report.

3. As further issues are resolved, they may be added at the end of future editions of this Summary.

4. In this Summary, the Panel wishes to record:

(a) the procedure involved in evaluating the claims put before it and in formulating recommendations for the consideration of the Governing Council; and

(b) its analyses of the recurrent substantive issues that arise in claims before the Commission relating to construction and engineering contracts.

5. In deciding to draft this Summary in a format which was separated out from the actual recommendations in the report itself, and in a way that was re-usable, the Panel was motivated by a number of matters. One was the desire to keep the substantive element of its reports to a manageable length. As the number of reports generated by the various panels increases, there seems to be a good deal to be said for what might be called economies of scale. Another matter was the awareness of the Panel of the high costs involved in translating official documents from their original language into each official language of the United Nations. The Panel is concerned to avoid the heavy costs of re-translation of recurrent texts, where the Panel is applying established principles to fresh claims. That re-translation would occur if the reasoning set out in this Summary had been incorporated into the principal text of each report at each relevant point. And, of course, that very repetition of principles seems unnecessary in itself, and this Summary avoids it. In sum, it is the

intention of the Panel to shorten those reports and recommendations, wherever possible, and thereby to reduce the cost of translating them.

# I. THE PROCEDURE

## A. Summary of the process

6. Each of the claimants whose claims are presented to this Panel is given the opportunity to provide the Panel with information and documentation concerning the claims. In its review of the claims, the Panel considers evidence from the claimants and the responses of Governments to the reports of the Executive Secretary issued pursuant to article 16 of the Provisional Rules for Claims Procedure (S/AC.26/1992/10) (the "Rules"). The Panel has retained consultants with expertise in valuation and in construction and engineering. The Panel has taken note of certain findings by other panels, approved by the Governing Council, regarding the interpretation of relevant Security Council resolutions and Governing Council decisions. The Panel is mindful of its function to provide an element of due process in the review of claims filed with the Commission. Finally, the Panel expounds in this Summary both procedural and substantive aspects of the process of formulating recommendations in its consideration of the individual claims.

## B. The nature and purpose of the proceedings

7. The status and functions of the Commission are set forth in the report of the Secretary-General pursuant to paragraph 19 of Security Council resolution 687 (1991) dated 2 May 1991 (S/22559).

8. The Panel is entrusted with three tasks in its proceedings. First, the Panel is required to determine whether the various types of losses alleged by the claimants are within the jurisdiction of the Commission, i.e., whether the losses were caused directly by Iraq's invasion and occupation of Kuwait. Second, the Panel has to verify whether the alleged losses that are in principle compensable have in fact been incurred by a given claimant. Third, the Panel is required to determine whether these compensable losses were incurred in the amounts claimed, and if not, the appropriate quantum for the loss based on the evidence before the Panel.

9. In fulfilling these tasks, the Panel considers that the vast number of claims before the Commission and the time limits in the Rules necessitate the use of an approach which is itself unique, but the principal characteristics of which are rooted in generally accepted procedures for claim determination, both domestic and international. It involves the employment of well established general legal standards of proof and valuation methods that have much experience behind them. The resultant process is essentially documentary rather than oral, and inquisitorial rather than adversarial. This method both realises and balances the twin objectives of speed and accuracy. It also permits the efficient resolution of the thousands of claims filed by corporations with the Commission.

## C. The procedural history of the "E3" Claims

10. The claims submitted to the Panel are selected by the secretariat of the Commission from among the construction and engineering claims (the ""E3" Claims") on the basis of established criteria. These include the date of filing and compliance by claimants with the requirements established for claims submitted by corporations and other legal entities (the "category "E" claims").

11. Prior to presenting each instalment of claims to the Panel, the secretariat performs a preliminary assessment of each claim included in a particular instalment in order to determine whether the claim meets the formal requirements established by the Governing Council in article 14 of the Rules.

12. Article 14 of the Rules sets forth the formal requirements for claims submitted by corporations and other legal entities. These claimants must submit:

(a) an "E" claim form with four copies in English or with an English translation;

(b) evidence of the amount, type and causes of losses;

(c) an affirmation by the Government that, to the best of its knowledge, the claimant is incorporated in or organized under the law of the Government submitting the claim;

(d) documents evidencing the name, address and place of incorporation or organization of the claimant;

(e) evidence that the claimant was, on the date on which the claim arose, incorporated or organized under the law of the Government which has submitted the claim;

(f) a general description of the legal structure of the claimant; and

(g) an affirmation by the authorized official for the claimant that the information contained in the claim is correct.

13. Additionally, the "E" claim form requires that a claimant submit with its claim a separate statement in English explaining its claim ("Statement of Claim"), supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and the amount of the claimed losses. The following particulars are requested in the "INSTRUCTIONS FOR CLAIMANTS":

(a) the date, type and basis of the Commission's jurisdiction for each element of loss;

(b) the facts supporting the claim;

(c) the legal basis for each element of the claim; and

(d) the amount of compensation sought and an explanation of how the amount was calculated.

14. If it is determined that a claim does not provide these particulars or does not include a Statement of Claim, the claimant is notified of the deficiencies and invited to provide the necessary information pursuant to article 15 of the Rules (the "article 15 notification"). If a claimant fails to respond to that notification, the claimant is sent a formal article 15 notification.

15. Further, a review of the legal and evidentiary basis of each claim identifies specific questions as to the evidentiary support for the alleged losses. It also highlights areas of the claim in which further information or documentation is required. Consequently, questions and requests for additional documentation are transmitted to the claimants pursuant to article 34 of the Rules (the "article 34 notification"). If a claimant fails to respond to the article 34 notification, a reminder notification is sent to the claimant. Upon receipt of the responses and additional documentation, a detailed factual and legal analysis of each claim is conducted. Communications with claimants are made through their respective governments.

16. It is the experience of the Panel in the claims reviewed by it to date that this analysis usually brings to light the fact that many claimants lodge little material of a genuinely probative nature when they initially file their claims. It also appears that many claimants do not retain clearly relevant documentation and are unable to provide it when asked for it. Indeed, some claimants destroy documents in the course of a normal administrative process without distinguishing between documents with no long term purpose and documents necessary to support the claims that they have put forward. Some claimants carry this to the extreme of having to ask the Commission, when responding to an article 15 or an article 34 notification, for a copy of their own claim. Finally, some claimants do not respond to requests for further information and evidence. The consequence is inevitably that for a large number of loss elements and a smaller number of claimants the Panel is unable to recommend any compensation.

17. The Panel performs a thorough and detailed factual and legal review of the claims. The Panel assumes an investigative role that goes beyond reliance merely on information and argument supplied with the claims as presented. After a review of the relevant information and documentation, the Panel makes initial determinations as to the compensability of the loss elements of each claim. Next, reports on each of the claims are prepared focusing on the appropriate valuation of each of the compensable losses,

and on the question of whether the evidence produced by the claimant is sufficient in accordance with article 35(3) of the Rules.

18. The cumulative effect is one of the following recommendations: (a) compensation for the loss in the full amount claimed; (b) compensation for the loss in a lower amount than that claimed; or (c) no compensation.

## II. PROCEDURAL ISSUES

### A. Panel recommendations

19. Once a motivated recommendation of a panel is adopted by a decision of the Governing Council, it is something to which this Panel gives great weight.

20. All panel recommendations are supported by a full analysis. When a new claim is presented to this Panel it may happen that the new claim will manifest the same characteristics as the previous claim which has been presented to a prior panel. In that event, this Panel will follow the principle developed by the prior panel. Of course, there may still be differences inherent in the two claims at the level of proof of causation or quantum. Nonetheless the principle will be the same.

21. Alternatively, that second claim will manifest different characteristics to the first claim. In that event, those different characteristics may give rise to a different issue of principle and thus warrant a different conclusion by this Panel to that of the previous panel.

### B. Evidence of loss

22. Pursuant to article 35(3) of the Rules, corporate claims must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and amount of the claimed loss. The Governing Council has stated in paragraph 5 of decision 15 that, with respect to business losses, there "will be a need for detailed factual descriptions of the circumstances of the claimed loss, damage or injury" in order to justify a recommendation for compensation (S/AC.26/1992/15).

23. The Panel takes this opportunity to emphasise that what is required of a claimant by article 35(3) of the Rules is the presentation to the Commission of evidence that must go to both causation and quantum. The Panel's interpretation of what is appropriate and sufficient evidence will vary according to the nature of the claim. In implementing this approach, the Panel applies the relevant principles extracted from those within the corpus of principles referred to in article 31 of the Rules.

#### 1. Sufficiency of evidence

24. In the final outcome, claims that are not supported by sufficient and appropriate evidence fail. In the context of the construction and engineering claims that are before this Panel, the most important evidence

is documentary. It is in this context that the Panel records a syndrome which it found striking when it addressed the first claims presented to it and which has continued to manifest itself in the claims subsequently encountered. This was the reluctance of claimants to make critical documentation available to the Panel.

25. Imperatively, the express wording of decision 46 of the Governing Council requires that "... claims received in categories 'D', 'E', and 'F' must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and amount of the claimed loss ..." In this same decision, the Governing Council confirmed that "... no loss shall be compensated by the Commission solely on the basis of an explanatory statement provided by the claimant,..." (S/AC.26/Dec.46(1998)).

26. It is also the case that the Panel has power under the Rules to request additional information and, in unusually large or complex cases, further written submissions. Such requests usually take the form of procedural orders. Where such orders are issued, considerable emphasis is placed on this need for sufficient documentary and other appropriate evidence.

27. Thus there is an obligation to provide the relevant documentary evidence both on the first filing of a claim and on any subsequent steps.

28. What is more, the absence of any relevant contemporary record to support a particular claim means that the claimant is inviting the Panel to make an award, often of millions of dollars, on no foundation other than the assertion of the claimant. This would not satisfy the "sufficient evidence" rule in article 35(3) of the Rules and would go against the instruction of the Governing Council contained in decision 46. It is something that the Panel is unable to do.

### 2. Sufficiency under article 35(3): The obligation of disclosure

29. Next in the context of documentary evidence, this Panel wishes to highlight an important aspect of the rule that claims must be supported by sufficient documentary and other appropriate evidence. This involves bringing to the attention of the Commission all material aspects of the claim, whether such aspects are seen by the claimant as beneficial to, or reductive of, its claims. The obligation is not dissimilar to good faith requirements under domestic jurisdictions.

### 3. Missing documents: The nature and adequacy of the paper trail

30. The Panel now turns to the question of what is required in order to establish an adequate paper trail.

31. Where documents cannot be supplied, their absence must be explained in a credible manner. The explanation must itself be supported by the appropriate evidence. Claimants may also supply substitute documentation

for or information about the missing documents. Claimants must remember that the mere fact that they suffered a loss at the same time as the hostilities in the Persian Gulf were starting or were in process does not mean that the loss was directly caused by Iraq's invasion and occupation of Kuwait. A causative link must be established. It should also be borne in mind that it was not the intention of the Security Council in its resolutions to provide a "new for old" basis of reimbursement of the losses suffered in respect of tangible property. Capital goods depreciate. That depreciation must be taken into account and demonstrated in the evidence filed with the Commission. In sum, in order for evidence to be considered appropriate and sufficient to demonstrate a loss, the Panel expects claimants to present to the Commission a coherent, logical and sufficiently evidenced file leading to the financial claims that they are making.

32. Of course, the Panel recognises that in time of civil disturbances, the quality of proof may fall below that which would be submitted in a peace time situation. Persons who are fleeing for their lives do not stop to collect the audit records. Allowances have to be made for such vicissitudes.

33. Thus the Panel is not surprised that some of the claimants in the instalments presented to it to date seek to explain the lack of documentation by asserting that it is, or was, located in areas of civil disorder or has been lost or destroyed, or, at least, cannot be accessed. But the fact that offices on the ground in the region have been looted or destroyed would not explain why claimants have not produced any of the documentary records that would reasonably be expected to be found at claimants' head offices situated in other countries.

34. The Panel approaches the claims presented to it in the light of the general and specific requirements to produce documents noted above. Where there is a lack of documentation, combined with no or no adequate explanation for that lack, and an absence of alternative evidence to make good any part of that lack, the Panel has no opportunity or basis upon which to make a recommendation.

### C. Amending claims after filing

35. In the course of processing the claims after they have been filed with the Commission, further information is sought from the claimants pursuant to the Rules. When the claimants respond they sometimes seek to use the opportunity to amend their claims. For example, they add new loss elements. They increase the amount originally sought in respect of a particular loss element. They transfer monies between or otherwise adjust the calculation of two or more loss elements. In some cases, they do all of these.

36. The Panel notes that the period for filing category "E" claims expired on 1 January 1996. The Governing Council approved a mechanism for these

claimants to file unsolicited supplements until 11 May 1998. After that date a response to an inquiry for additional evidence is not an opportunity for a claimant to increase the quantum of a loss element or elements or to seek to recover in respect of new loss elements. In these circumstances, the Panel is unable to take into account such increases or such new loss elements when it is formulating its recommendations to the Governing Council. It does, however, take into account additional documentation where that is relevant to the original claim, either in principle or in detail. It also exercises its inherent powers to re-characterise a loss, which is properly submitted as to time, but is inappropriately allocated.

37. Some claimants also file unsolicited submissions. These too sometimes seek to increase the original claim in the ways indicated in the previous paragraph. Such submissions when received after 11 May 1998 are to be treated in the same way as amendments put forward in solicited supplements. Accordingly, the Panel is unable to, and does not, take into account such amendments when it is formulating its recommendations to the Governing Council.

## III. SUBSTANTIVE ISSUES

### A. Applicable law

38. As set forth in paragraphs 17 and 18 of the Fourth Report, paragraph 16 of Security Council resolution 687 (1991) reaffirmed the liability of Iraq and defined the jurisdiction of the Commission. Pursuant to article 31 of the Rules, the Panel applies Security Council resolution 687 (1991), other relevant Security Council resolutions, decisions of the Governing Council, and, where necessary, other relevant rules of international law.

### B. Liability of Iraq

39. When adopting resolution 687 (1991), the Security Council acted under chapter VII of the Charter of the United Nations which provides for maintenance or restoration of international peace and security. The Security Council also acted under chapter VII when adopting resolution 692 (1991), in which it decided to establish the Commission and the Compensation Fund referred to in paragraph 18 of resolution 687 (1991). Specifically, under resolution 687 (1991), the issue of Iraq's liability for losses falling within the Commission's jurisdiction is resolved and is not subject to review by the Panel.

40. In this context, it is necessary to address the meaning of the term "Iraq". In Governing Council decision 9 (S/AC.26/1992/9) and other Governing Council decisions, the word "Iraq" was used to mean the Government of Iraq, its political subdivisions, or any agency, ministry, instrumentality or entity (notably public sector enterprises) controlled by the Government of Iraq. In the Report and Recommendations Made by the Panel of Commissioners Concerning the Fifth Instalment of "E3" Claims (the "Fifth Report", S/AC.26/1999/2), this Panel adopted the presumption that

for contracts performed in Iraq, the other contracting party was an Iraqi Government entity

### C. The "arising prior to" clause

41. The Panel recognises that it is difficult to establish a fixed date for the exclusion of its jurisdiction that does not contain an arbitrary element. With respect to the interpretation of the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991), the Panel of Commissioners that reviewed the first instalment of "E2" claims concluded that the "arising prior to" clause was intended to exclude the foreign debt of Iraq which existed at the time of Iraq's invasion of Kuwait from the jurisdiction of the Commission. As a result, the "E2" Panel found that:

> "In the case of contracts with Iraq, where the performance giving rise to the original debt had been rendered by a claimant more than three months prior to 2 August 1990, that is, prior to 2 May 1990, claims based on payments owed, in kind or in cash, for such performance are outside of the jurisdiction of the Commission as claims for debts or obligations arising prior to 2 August 1990." (Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of "E2" Claims, S/AC.26/1998/7, paragraph 90)).

42. That report was approved by the Governing Council. Accordingly, this Panel adopts the "E2" Panel's interpretation which is to the following effect:

(a) the phrase "without prejudice to the debts and obligations of Iraq arising prior to 2 August 1990, which will be addressed through normal mechanisms" was intended to have an exclusionary effect on the Commission's jurisdiction, i.e., such debts and obligations are not compensable by the Commission;

(b) the limitation contained in the clause "arising prior to 2 August 1990" was intended to leave unaffected the debts and obligations of Iraq which existed prior to Iraq's invasion and occupation of Kuwait; and

(c) the terms "debts" and "obligations" should be given the customary and usual meanings applied to them in ordinary discourse.

43. Thus, this Panel accepts that, in general, a claim relating to a "debt or obligation arising prior to 2 August 1990" means a debt or obligation that is based on work performed or services rendered prior to 2 May 1990.

### D. Application of the "direct loss" requirement

44. Paragraph 21 of Governing Council decision 7 (S/AC.26/1991/7/Rev.1) is the seminal rule on "directness" for category "E" claims. It provides in relevant part that compensation is available for:

> "... any direct loss, damage, or injury to corporations and other entities as a result of Iraq's unlawful invasion and occupation of Kuwait. This will include any loss suffered as a result of:
>
> (a) Military operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991;
>
> (b) Departure of persons from or their inability to leave Iraq or Kuwait (or a decision not to return) during that period;
>
> (c) Actions by officials, employees or agents of the Government of Iraq or its controlled entities during that period in connection with the invasion or occupation;
>
> (d) The breakdown of civil order in Kuwait or Iraq during that period; or
>
> (e) Hostage-taking or other illegal detention."

45. The text of paragraph 21 of decision 7 is not exhaustive and leaves open the possibility that there may be causes of "direct loss" other than those enumerated. Paragraph 6 of decision 15 of the Governing Council (S/AC.26/1992/15) confirms that there "will be other situations where evidence can be produced showing claims are for direct loss, damage or injury as a result of Iraq's unlawful invasion and occupation of Kuwait". Should that be the case, the claimants will have to prove specifically that a loss that was not suffered as a result of one of the five categories of events set out in paragraph 21 of decision 7 is nevertheless "direct". Paragraph 3 of decision 15 emphasises that for any alleged loss or damage to be compensable, the "causal link must be direct". (See also paragraph 9 of decision 9).

46. While the phrase "as a result of" contained in paragraph 21 of decision 7 is not further clarified, Governing Council decision 9 provides guidance as to what may be considered business "losses suffered as a result of" Iraq's invasion and occupation of Kuwait. It identifies the three main categories of loss types in the "E" claims: losses in connection with contracts, losses relating to tangible assets and losses relating to income-producing properties. Thus, decisions 7 and 9 provide specific guidance to the Panel as to how the "direct loss" requirement must be interpreted.

47. In the light of the decisions of the Governing Council identified above, the Panel has reached certain conclusions as to the meaning of "direct loss". These conclusions are set out in the following paragraphs.

48. With respect to physical assets in Iraq or in Kuwait as at 2 August 1990, a claimant can prove a direct loss by demonstrating two matters. First, that the breakdown in civil order in these countries, which resulted from Iraq's invasion and occupation of Kuwait, caused the claimant to

evacuate its employees. Second, as set forth in paragraph 13 of decision 9, that the claimant left physical assets in Iraq or in Kuwait.

49. With respect to losses relating to contracts to which Iraq was a party, force majeure or similar legal principles are not available as a defence to the obligations of Iraq.

50. With respect to losses relating to contracts to which Iraq was not a party, a claimant may prove a direct loss if it can establish that Iraq's invasion and occupation of Kuwait or the breakdown in civil order in Iraq or Kuwait following Iraq's invasion caused the claimant to evacuate the personnel needed to perform the contract.

51. In the context of the losses set out above, reasonable costs which have been incurred to mitigate those losses are direct losses. The Panel bears in mind that the claimant was under a duty to mitigate any losses that could have been reasonably avoided after the evacuation of its personnel from Iraq or Kuwait.

52. These findings regarding the meaning of "direct loss" are not intended to resolve every issue that may arise with respect to this Panel's interpretation of Governing Council decisions 7 and 9. Rather, these findings are intended as initial parameters for the review and evaluation of the claims.

53. Finally, there is the question of the geographical extent of the impact of events in Iraq and Kuwait outside these two countries. Following on the findings of the "E2" Panel in its first report, this Panel finds that damage or loss suffered as a result of (a) military operations in the region by either the Iraqi or the Allied Coalition Forces or (b) a credible and serious threat of military action that was connected to Iraq's invasion and occupation of Kuwait is compensable in principle. Of course, the further the project in question was from the area where military operations were taking place, the more the claimant may have to do to establish causality. On the other hand, the potential that an event such as the invasion and occupation of Kuwait has for causing an extensive ripple effect cannot be ignored. Each case must depend on its facts.

## E. Date of loss

54. There is no general principle with respect to the date of loss. It needs to be addressed on an individual basis. In addition, the specific loss elements of each claim may give rise to different dates if analysed strictly. However, applying a different date to each loss element within a particular claim is impracticable as a matter of administration. Accordingly, the Panel has decided to determine a single date of loss for each claimant, which, in most cases, coincides with the date of the collapse of the project.

## F. Currency exchange rate

55. While many of the costs incurred by the claimants were denominated in currencies other than United States dollars, the Commission issues its awards in that currency. Therefore the Panel is required to determine the appropriate rate of exchange to apply to losses expressed in other currencies.

56. The Panel finds that, as a general rule, where an exchange rate is set forth in the contract then that is the appropriate rate for losses under the relevant contracts because this was specifically agreed by the parties.

57. For losses that are not contract based, however, the contract rate is not usually an appropriate rate of exchange. For non-contractual losses, the Panel finds the appropriate exchange rate to be the prevailing commercial rate, as evidenced by the United Nations Monthly Bulletin of Statistics, at the date of loss.

## G. Interest

58. On the issue of the appropriate interest rate to be applied, the relevant Governing Council decision is decision 16 (S/AC.26/1992/16). According to that decision, "[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award". In decision 16 the Governing Council further specified that "[i]nterest will be paid after the principal amount of awards", while postponing any decision on the methods of calculation and payment.

59. Accordingly, the Panel recommends that interest shall run from the date of loss.

## H. Claim preparation costs

60. Some claimants seek to recover compensation for the cost of preparing their claims. The compensability of claim preparation costs has not hitherto been ruled on and will be the subject, in due course, of a specific decision by the Governing Council. Therefore, this Panel has made and will make no recommendations with respect to claim preparation costs in any of the claims where they have been raised.

## I. Contract losses

### 1. Claims for contract losses with non-Iraqi party

61. Some of the claims relate to losses suffered as a result of non-payment by a non-Iraqi party. The fact of such a loss, simpliciter, does not establish it as a direct loss within the meaning of Security Council resolution 687 (1991). In order to obtain compensation, a claimant must lodge sufficient evidence that the entity with which it carried on business

on 2 August 1990 was unable to make payment as a direct result of Iraq's invasion and occupation of Kuwait.

62. A good example of this would be that the party was insolvent and that the insolvency was a direct result of Iraq's invasion and occupation of Kuwait. At the very least a claimant should demonstrate that the other party had not renewed operations after the end of the occupation. In the event that there are multiple factors which have resulted in the failure to resume operations, apart from the proved insolvency of the other party, the Panel will have to be satisfied that the effective reason or causa causans was Iraq's invasion and occupation of Kuwait.

63. Any failure to pay because the other party was excused from performance by the operation of law which came into force after Iraq's invasion and occupation of Kuwait is in the opinion of this Panel the result of a novus actus interveniens and is not a direct loss arising out of Iraq's invasion and occupation of Kuwait.

### 2. Advance payments

64. Many construction contracts provide for an advance payment to be made by the employer to the contractor. These advance payments are often calculated as a percentage of the initial price (initial, because many such contracts provide for automatic and other adjustments of the price during the execution of the works). The purpose of the advance payment is to facilitate certain activities which the contractor will need to carry out in the early stages.

65. Mobilisation is often one such activity. Plant and equipment may need to be purchased. A workforce will have to be assembled and transported to the work site, where facilities will be needed to accommodate it. Another such activity is the ordering of substantial or important materials which are in short supply and may, therefore, be available only at a premium or at a long lead time.

66. Advance payments are usually secured by a bond provided by the contractor, and are usually paid upon the provision of the bond. They are frequently repaid over a period of time by way of deduction by the employer from the sums which are payable at regular intervals (often monthly) to the contractor for work done. See, in the context of payments which are recovered over a period of time, the observations about amortisation at paragraph 120, infra. Those observations apply mutatis mutandis to the repayment of advance payments.

67. The Panel notes that some claimants presenting claims have not clearly accounted for the amounts of money already paid to them by the employer. This Panel regularly sees evidence of advance payments amounting to tens of millions of United States dollars. Where advance payments have been part of the contractual arrangements between the claimant and the employer, the claimant must account for these payments in reduction of its claims, unless

these payments can be shown to have been recouped in whole or in part by the employer. Where no explanation or proof of repayment is forthcoming, the Panel has no option but to conclude that these amounts paid in advance are due, on a final accounting, to the employer, and must be deducted from the claimant's claim.

### 3. Contractual arrangements to defer payments

#### (a) The analysis of "old debt"

68. Where payments are deferred under the contracts upon which the claims are based, an issue arises as to whether the claimed losses are "debts and obligations arising prior to 2 August 1990" and therefore outside the jurisdiction of the Commission.

69. In its first report, the "E2" Panel interpreted Security Council resolution 687 (1991) as intending to eliminate what may be conveniently called "old debt". In applying this interpretation to the claim before it the "E2" Panel identified, as "old debt", cases where the performance giving rise to the original debt had been rendered by a claimant more than three months prior to 2 August 1990, that is, prior to 2 May 1990. In those cases, claims based on payments owed, in kind or in cash, for such performance are outside the jurisdiction of the Commission as claims for debts or obligations arising prior to 2 August 1990. "Performance" as understood by the "E2" Panel for the purposes of this rule meant complete performance under a contract, or partial performance, so long as an amount was agreed to be paid for that portion of completed partial performance. In the claim the "E2" Panel was considering, the work under the contract was clearly performed prior to 2 May 1990. However, the debts were covered by a form of deferred payments agreement dated 29 July 1984. This agreement was concluded between the parties to the original contracts and postdated the latter.

70. In its analysis, the "E2" Panel found that deferred payments arrangements go to the very heart of what the Security Council described in paragraph 16 of resolution 687 as a debt of Iraq arising prior to 2 August 1990. It was this very kind of obligation which the Security Council had in mind when, in paragraph 17 of resolution 687 (1991), it directed Iraq to "adhere scrupulously" to satisfying "all of its obligations concerning servicing and repayment". Therefore, irrespective of whether such deferred payment arrangements may have created new obligations on the part of Iraq under a particular applicable municipal law, they did not do so for the purposes of resolution 687 (1991) and are therefore outside the jurisdiction of this Commission.

71. The arrangements that the "E2" Panel was considering were not arrangements that arose out of genuine arms' length commercial transactions, entered into by construction companies as part and parcel of

their normal businesses. Instead the situation which the "E2" Panel was addressing was described as follows:

> "The negotiation of these deferred payment arrangements was typically conducted with Iraq not by the contractor or supplier itself, but rather by its Government. Typically, the Government negotiated on behalf of all of the contracting parties from the country concerned who were in a similar situation. The deferred payment arrangements with Iraq were commonly entered into under a variety of forms, including complicated crude oil barter arrangements under which Iraq would deliver certain amounts of crude oil to a foreign State to satisfy consolidated debts; the foreign State then would sell the oil and, through its central bank, credit particular contractors' accounts." (S/AC.26/1998/7, paragraph 93).
>
> "Iraq's debts were typically deferred by contractors who could not afford to "cut their losses" and leave, and thus these contractors continued to work in the hope of eventual satisfaction and continued to amass large credits with Iraq. In addition, the payment terms were deferred for such long periods that the debt servicing costs alone had a significant impact on the continued growth of Iraq's foreign debt." (S/AC.26/1998/7, paragraph 94).

72. This Panel agrees.

### (b) Application of the "old debt" analysis

73. In the application of this analysis to claims other than those considered by the "E2" Panel, there are two aspects which are worth mentioning.

74. The first is that the problem does not arise where the actual work has been performed after 2 May 1990. The arrangement deferring payment is irrelevant to the issue. The issue typically resolves itself in these cases into one of proof of the execution of the work, the quantum, the non payment and causation.

75. The second concerns the ambit of the above analysis. As noted above, the claims which led to the above analysis arose out of "non-commercial" arrangements. They were situations where the original terms of payment entered into between the parties had been renegotiated during the currency of the contract or the negotiations or renegotiations were driven by inter-governmental exchanges. Such arrangements were clearly the result of the impact of Iraq's increasing international debt.

76. Thus one can see underlying the "E2" Panel's analysis two important factors. The first was the subsequent renegotiation of the payment terms of an existing contract to the detriment of the claimant (contractor). The second was the influence on contracts of the transactions between the

respective governments. In both cases, a key element underlying the arrangements must be the impact of Iraq's mountain of old debt.

77. In the view of this Panel, where either of these factors is wholly or partially the explanation of the "loss" suffered by the claimant, then that loss or the relevant part of it is outside the jurisdiction of the Commission and cannot form the basis of recommendation by a panel. It is not necessary that both factors be present. A contract that contained deferment provisions as originally executed would still be caught by the "arising prior to" rule if the contract was the result of an inter-governmental agreement driven by the exigencies of Iraq's financial problems. It would not be a commercial transaction so much as a political agreement, and the "loss" would not be a loss falling within the jurisdiction of the Commission.

### 4. Losses arising as a result of unpaid retention monies

78. The claims before this Panel include requests for compensation for what could be described as another form of deferred payment, namely unpaid retention monies.

79. Under many if not most construction contracts, provision is made for the regular payment to the contractor of sums of money during the performance of the work under the contract. The payments are often monthly, and often calculated by reference to the amount of work that the contractor has done since the last regular payment was calculated.

80. Where the payment is directly related to the work done, it is almost invariably the case that the amount of the actual (net) payment is less than the contractual value of the work done. This is because the employer retains in his own hands a percentage (usually 5 per cent or 10 per cent and with or without an upper limit) of that contractual value. (The same approach usually obtains as between the contractor and his subcontractors.) The retained amount is often called the "retention" or the "retention fund". It builds up over time. The less work the contractor carries out before the project comes to an early halt, the smaller the fund.

81. The retention is usually payable in two stages, one at the commencement of the maintenance period, as it is often called, and the other at the end. The maintenance period usually begins when the employer first takes over the project, and commences to operate or use it. Thus the work to which any particular sum which is part of the retention fund relates may have been executed a very long time before the retention fund is payable.

82. Retention fund provisions are very common in the construction world. The retention fund serves two roles. It is an encouragement to the contractor to remedy defects appearing before or during the maintenance period. It also provides a fund out of which the employer can reimburse itself for defects that appear before or during the maintenance period

which the contractor has, for whatever reason, failed or refused to make good.

83. In the claims before this Panel, events - in the shape of Iraq's invasion and occupation of Kuwait - have intervened. The contract has effectively come to an end. There is no further scope for the operation of the retention provisions. It follows that the contractor, through the actions of Iraq, has been deprived of the opportunity to recover the money. In consequence the claims for retention fall within the jurisdiction of the Commission.

84. In the light of the above considerations it seems to this Panel that the situation in the case of claims for retention is as follows:

(a) The evidence before the Commission may show that the project was in such trouble that it would never have reached a satisfactory conclusion. In such circumstances, there can be no positive recommendation, principally because there is no direct causative link between the loss and the invasion and occupation of Kuwait.

(b) Equally the evidence may show that the project would have reached a conclusion, but that there would have been problems to resolve. Accordingly, the contractor would have had to expend money resolving those problems. That potential cost would have to be deducted from the claim for retention; and accordingly the most convenient course would be to recommend an award to the contractor of a suitable percentage of the unpaid retention.

(c) Finally, on the evidence it may be the case that there is no reason to believe or conclude that the project would have gone other than satisfactorily. In those circumstances, it seems that the retention claim should succeed in full.

### 5. Guarantees, bonds, and like securities

85. Financial recourse agreements are part and parcel of a major construction contract. Instances are (a) guarantees - for example given by parent companies or through banks; (b) what are called "on demand" or "first demand" bonds (hereinafter "on demand bonds") which support such matters as bidding and performance; and (c) guarantees to support advance payments. (Arrangements with government sponsored bodies that provide what might be called "fall-back" insurance are in a different category. As to these, see paragraphs 95 to 102, *infra*).

86. Financial recourse arrangements give rise to particular problems when it comes to determining the claims filed in the population of construction and engineering claims. A convenient and stark example is that of the on demand bond.

87. The purpose of an on demand bond is to permit the beneficiary to obtain monies under the bond without having to prove default on the part of the other party - namely, in the situations under discussion here, the contractor executing the work. Such a bond is often set up by way of a guarantee given by the contractor or its parent to its own bank in its home State. That bank gives an identical bond to a bank (the second bank) in the State of the employer under the construction contract. In its turn, the second bank gives an identical bond to the employer. This leaves the employer, at least theoretically, in the very strong position of being able, without having to prove any default on the part of the contractor, to call down a large sum of money which will be debited to the contractor.

88. Of course, the contractor's bank will have two arrangements in place. First, an arrangement whereby it is secured as to the principal sum, the subject of the bond, in case the bond is called. Second, it will have arranged to exact a service charge, typically raised quarterly, half-yearly or annually.

89. Many claimants have raised claims in respect of the service charges; and also in respect of the principal sums. The former are often raised in respect of periods of years measured from the date of Iraq's invasion and occupation of Kuwait. The latter have, hitherto at least, been cautionary claims, in case the bonds are called in the future.

90. This Panel approaches this issue by observing that the strength of the position given to the employer by the on demand bond is sometimes more apparent than real. This derives from the fact that the courts of some countries are reluctant to enforce payment of such bonds if they feel that there is serious abuse by the employer of its position. For example, where there is a persuasive allegation of fraud, some courts will be prepared to injunct the beneficiary from making a call on the bond, or one or other of the banks from meeting the demand. It is also the case that there may be remedies for the contractor in some jurisdictions when the bonds are called in circumstances that are clearly outside the original contemplation of the parties.

91. The Panel notes that most if not all contracts for the execution of major construction works by a contractor from one country in the territory of another country will have clauses to deal with war, insurrection or civil disorder. Depending on the approach of the relevant governing law to such matters, these provisions, if triggered, may have a direct or indirect effect on the validity of the bond. Direct, if under the relevant legal regime, the effects of the clause in the construction contract apply also to the bond; indirect if the termination or modification of the underlying obligation (the construction contract) gives rise to the opportunity to seek a forum-driven modification or termination of the liabilities under the bond.

92. In addition, the simple passage of time is likely to give rise to the right to treat the bond obligation as expired or unenforceable, or to seek a forum-driven resolution to the same effect.

93. In sum, and in the context of Iraq's invasion and occupation of Kuwait and the time which has passed since then, it seems to this Panel that it is highly unlikely that on demand bond obligations of the sort this Panel has seen in the instalments it has addressed are alive and effective.

94. If that analysis is correct, then it seems to this Panel that claims for service charges on these bonds will only be sustainable in very unusual circumstances. Equally, claims for the principal will only be sustainable where the principal has in fact been irrevocably paid out and where the beneficiary of the bond had no factual basis to make a call upon the bond.

### 6. Export credit guarantees

95. Arrangements with government sponsored bodies that provide what might be called "fall-back" insurance are in a different case to guarantees generally. These forms of financial recourse have names such as "credit risk guarantees". They are in effect a form of insurance, often underwritten by the government of the territory in which the contractor is based. They exist as part of the economic policy of the government in question, in order to encourage trade and commerce by its nationals abroad.

96. Such guarantees often have a requirement that the contractor must exhaust all local remedies before calling on the guarantee; or must exhaust all possible remedies before making a call.

97. Claims have been made by parties for:

(a) reimbursement of the premia paid to obtain such guarantees; and also for

(b) shortfalls between the amounts recovered under such guarantees and the losses said to have been incurred.

In the view of this Panel, one of these types of claim is misconceived; and the other is mis-characterised.

98. A claim for the premia is misconceived. A premium paid for any form of insurance is not recoverable unless the policy is avoided. Once the policy is in place, either the event that the policy is intended to embrace occurs, or it does not. If it does, then there is a claim under the policy. If it does not then there is no such claim. In neither case does it seem to the Panel that the arrangements - prudent and sensible as they are - give rise to a claim for compensation for the premia. There is no "loss" properly so called or any causative link with Iraq's invasion and occupation of Kuwait.

99. Further, where a contractor has in fact been indemnified in whole or in part by such a body in respect of losses incurred as a result of Iraq's invasion and occupation of Kuwait, there is, to that extent, no longer any loss for which that contractor can claim to the Commission. Its loss has been made whole.

100. The second situation is that where a contractor claims for the balance between what are said to be losses incurred as a result of Iraq's invasion and occupation of Kuwait and what has been recovered from the guarantor.

101. Here the claim is mis-characterised. That balance may indeed be a claimable loss; but its claimability has nothing to do with the fact that the monies represent a shortfall between what has been recovered under the guarantee and what has been lost. Instead, the correct analysis should start from a review of the cause of the whole of the loss of which the balance is all that remains. The first step is to establish whether there is evidence to support that whole sum, that it is indeed a sum that the claimant has paid out or failed to recover; and that there is the necessary causation. To the extent that the sum is established, then to that extent the claim is prima facie compensable. However, so far as there has been reimbursement by the guarantor, the loss has been made good, and there is nothing left to claim for. It is only if there is still some qualifying loss, not made good, that there is room for a recommendation of this Panel.

102. Finally, there are the claims by the bodies granting the credit guarantees who have paid out sums of money. They entered into an insurance arrangement with the contractor. In consideration of that arrangement, they required the payment of premia. As before, either the event covered by the insurance occurred or it did not. In the former case, the Panel would have thought that the guarantor was contractually obliged to pay out; and in the latter case, not so. Whether any payments made in these circumstances give rise to a compensable claim is not a matter for this Panel. Such claims come within the population of claims allocated to the "E/F" Panel.

## 7. Frustration and force majeure clauses

103. Construction contracts, both in common law and under the civil law, frequently contain provisions to deal with events that have wholly changed the nature of the venture. Particular events which are addressed by such clauses include war, civil strife and insurrection. Given the length of time that a major construction project takes to come to fruition and the sometimes volatile circumstances, both political and otherwise, in which such contracts are carried out, this is hardly surprising. Indeed, it makes good sense. The clauses make provision as to how the financial consequences of the event are to be borne; and what the result is to be so far as the physical project is concerned.

104. Such clauses give rise to two questions when it comes to the population of claims before this Panel. The first question is whether Iraq is entitled to invoke such clauses to reduce its liability. The second is whether claimants may utilise such clauses to support or enhance their recovery from the Commission.

105. As to the first question, the position seems to this Panel to be as follows. In the population of claims before the Commission, the frustrating or force majeure event will nearly always be the act or omission of Iraq itself. However, such a clause is designed to address events which, if they occurred at all, were anticipated to be wholly outside the control of both parties. It would be quite inappropriate for the causal wrongdoer to rely on such clause to reduce the consequences of its own wrongdoing.

106. But the second question then arises as to whether claimants can rely upon such clauses. An example of such reliance would be where the clause provides for the acceleration of payments which otherwise would not have fallen due. As to this question, one example of this sort of claim has been addressed and the answer categorically spelt out in the first report of the "E2" Panel as follows:

> "Second, [the Claimants] direct the Commission's attention to the clauses relating to "frustration" in the respective underlying contracts. The Claimants assert that in the case of frustration of contract, these clauses accelerate the payments due under the contract, in effect giving rise to a new obligation on the part of Iraq to pay all the amounts due and owing under the contract regardless of when the underlying work was performed. The Panel has concluded that claimants may not invoke such contractual agreements or clauses before the Commission to avoid the "arising prior to" exclusion established by the Security Council in resolution 687 (1991); consequently, this argument must fail." (S/AC.26/1998/7, paragraph 188).

107. The situation described above was one where the work that was the subject of the claim had been performed prior to Iraq's invasion and occupation of Kuwait, and, therefore, fell clearly foul of the "arising prior to" rule. However, the claimants, who had agreed on arrangements for delayed payment, sought to rely on the frustration clause to get over this problem. The argument was, as this Panel understands it, that the frustration clause was triggered by the events which had in fact occurred, namely Iraq's invasion and occupation of Kuwait. The frustration clause provided for the accelerated payment of sums due under the contract. Payment of the sums had originally been deferred to dates which were still in the future at the time of the invasion and occupation; but the frustrating event meant that they became due during the time of, or indeed at the beginning of, Iraq's invasion and occupation of Kuwait. Accordingly, the payments had, in the event, become due within the period

covered by the jurisdiction established by Security Council resolution 687 (1991). Therefore, a claim for the reimbursement of these payments could be entertained by the "E2" Panel.

108. It was this claim that the "E2" Panel rejected. This Panel agrees.

109. There remains the situation where the frustration clause is being used by claimants to enhance a claim, other than by way of circumventing the "arising prior to" rule, for example, where the acceleration delivered by the frustration clause is put forward to seek to bring into the period within the jurisdiction of the Commission payments which would otherwise have been received, under the contract, well after the liberation of Kuwait, and therefore would not otherwise be compensable.

110. In the view of this Panel, such claims would similarly fail. In this case, as in the case addressed by the "E2" Panel, claimants are seeking to use the provisions of private contracts to enhance the jurisdiction granted by Security Council resolution 687 (1991) and defined by jurisprudence developed by the Commission. That is not an appropriate course. It is not open to individual entities by agreement or otherwise, to modify the jurisdiction of the Commission.

## J. Claims for overhead and "lost profits"

### 1. General

111. Any construction project can be broken down into a number of components. All of these components contribute to the pricing of the works. In this Panel's view, it is helpful for the examination of these kinds of claims to begin by rehearsing in general terms the way in which many contractors in different parts of the world construct the prices that ultimately appear in the construction contracts they sign. Of course, there is no absolute rule as to this process. Indeed, it is unlikely that any two contractors will assemble their bids in exactly the same way. But the constraints of construction work and the realities of the financial world impose a general outline from which there will rarely be a substantial deviation.

112. Many of the construction contracts encountered in the claims submitted to this Panel contain a schedule of rates or a "bill of quantities". This document defines the amount to be paid to the contractor for the work performed. It is based on previously agreed rates or prices. The final contract price is the aggregate value of the work calculated at the quoted rates together with any variations and other contractual entitlements and deductions which increase or decrease the amount originally agreed.

113. Other contracts in the claims submitted to this Panel are lump sum contracts. Here the schedule of rates or bill of quantities has a narrower role. It is limited to such matters as the calculation of the sums to be paid in interim certificates and the valuation of variations.

114. In preparing the schedule of rates, the contractor will plan to recover all of the direct and indirect costs of the project. On top of this will be an allowance for the "risk margin". In so far as there is an allowance for profit it will be part of the "risk margin". However, whether or not a profit is made and, if made, in what amount, depends obviously on the incidence of risk actually incurred.

115. An examination of actual contracts combined with its own experience of these matters has provided this Panel with guidelines as to the typical breakdown of prices that may be anticipated on construction projects of the kind relevant to the claims submitted to this Panel.

116. The key starting point is the base cost - the cost of labour, materials and plant - in French the "prix secs". In another phrase, this is the direct cost. The direct cost may vary, but usually represents 65 to 75 per cent of the total contract price.

117. To this is added the indirect cost - for example the supply of design services for such matters as working drawings and temporary works by the contractor's head office. Typically, this indirect cost represents about 25 to 30 per cent of the total contract price.

118. Finally, there is what is called the "risk margin" - the allowance for the unexpected. The risk margin is generally in the range of between barely above zero and five per cent of the total contract price. The more smoothly the project goes, the less the margin will have to be expended. The result will be enhanced profits, properly so called, recovered by the contractor at the end of the day. The more the unexpected happens and the more the risk margin has to be expended, the smaller the profit will ultimately be. Indeed, the cost of dealing with the unexpected or the unplanned may equal or exceed the risk margin, leading to a nil result or a loss.

119. In the view of the Panel, it is against this background that some of the claims for contract losses need to be seen.

## 2. Head office and branch office expenses

120. These are generally regarded as part of the overhead. These costs can be dealt with in the price in a variety of ways. For example, they may be built into some or all of the prices against line items; they may be provided for in a lump sum; they may be dealt with in many other ways. One aspect, however, will be common to most, if not all, contracts. It will be the intention of the contractor to recover these costs through the price at some stage of the execution of the contract. Often the recovery has been spread through elements of the price, so as to result in repayment through a number of interim payments during the course of the contract. Where this has been done, it may be said that these costs have been amortised. This factor is relevant to the question of double-counting (see paragraph 123, infra).

121. If therefore any part of the price of the works has been paid, it is likely that some part of these expenses has been recovered. Indeed, if these costs have been built into items which are paid early, a substantial part or even all of these costs may have been recovered.

122. If these items were the subject of an advance payment, again they may have been recovered in their entirety at an early stage of the project. Here of course there is an additional complication, since the advance payments will be credited back to the employer - see paragraph 66, supra - during the course of the work. In this event, the Panel is thrown back onto the question of where in the contractor's prices payment for these items was intended to be.

123. In all of these situations, it is necessary to avoid double-counting. By this the Panel means the situation where the contractor is specifically claiming, as a separate item, elements of overhead which, in whole or in part, are already covered by the payments made or claims raised for work done.

124. The same applies where there are physical losses at a branch or indeed a site office or camp. These losses are properly characterised, and therefore claimable, if claimable at all, as losses of tangible assets.

### 3. Loss of profits on a particular project

125. Governing Council decision 9, paragraph 9, provides that where "continuation of the contract became impossible for the other party as a result of Iraq's invasion and occupation of Kuwait, Iraq is liable for any direct loss the other party suffered as a result, including lost profits".

126. As will be seen from the observations at paragraphs 111 to 119, supra, the expression "lost profits" is an encapsulation of quite a complicated concept. In particular, it will be appreciated that achieving profits or suffering a loss is a function of the risk margin and the actual event.

127. The qualification of "margin" by "risk" is an important one in the context of construction contracts. These contracts run for a considerable period of time; they often take place in remote areas or in countries where the environment is hostile in one way or another; and of course they are subject to political problems in a variety of places - where the work is done, where materials, equipment or labour have to be procured, and along supply routes. The surrounding circumstances are thus very different and generally more risk prone than is the case in the context of, say, a contract for the sale of goods.

128. In the view of this Panel it is important to have these considerations in mind when reviewing a claim for lost profits on a major construction project. In effect one must review the particular project for what might be called its "loss possibility". The contractor will have assumed risks. He will have provided a margin to cover these risks. He will have to

demonstrate a substantial likelihood that the risks would not occur or would be overcome within the risk element so as to leave a margin for actual profit.

129. This approach, in the view of this Panel, is inherent in the thinking behind paragraph 5 of Governing Council decision 15. This paragraph expressly states that a claimant seeking compensation for business losses such as loss of profits, must provide "detailed factual descriptions of the circumstances of the claimed loss, damage or injury" in order for compensation to be awarded.

130. In the light of the above analysis, and in conformity with the two Governing Council decisions cited above, this Panel requires the following from those construction and engineering claimants that seek to recover for lost profits. First, the phrase "continuation of the contract" imposes a requirement on the claimant to prove that it had an existing contractual relationship at the time of the invasion. Second, the provision requires the claimant to prove that the continuation of the relationship was rendered impossible by Iraq's invasion and occupation of Kuwait. This provision indicates a further requirement that profits should be measured over the life of the contract. It is not sufficient to prove that there would have been a "profit" at some stage before the completion of the project. Such a proof would only amount to a demonstration of a temporary credit balance. This can even be achieved in the early stages of a contract, for example where the pricing has been "front-loaded" for the express purpose of financing the project.

131. Instead, the claimant must lodge sufficient and appropriate evidence to show that the contract would have been profitable as a whole. Such evidence would include projected and actual financial information relating to the relevant project, such as audited financial statements, budgets, management accounts, turnover, original bids and tender sum analyses, time schedules drawn up at the commencement of the works, profit/loss statements, finance costs and head office costs prepared by or on behalf of the claimant for each accounting period from the first year of the relevant project to March 1993. The claimant should also provide: original calculations of profit relating to the project and all revisions to these calculations made during the course of the project; management reports on actual financial performance as compared to budgets that were prepared during the course of the project; evidence demonstrating that the project proceeded as planned, such as monthly/periodic reports, planned/actual time schedules, interim certificates or account invoices, details of work that was completed but not invoiced by the claimant, details of payments made by the employer and evidence of retention amounts that were recovered by the claimant. In addition, the claimant should provide evidence of the percentage of the works completed at the time work on the project ceased.

### 4. Loss of profits for future projects

132. Some claimants say they would have earned profits on future projects, not let at the time of Iraq's invasion and occupation of Kuwait. Such claims are of course subject to the sorts of considerations set out by this Panel in its review of claims for lost profits on individual projects. In addition, it is necessary for such a claimant to overcome the problem of remoteness. How can a claimant be certain that it would have won the opportunity to carry out the projects in question? If there was to be competitive tendering, the problem is all the harder. If there was not to be competitive tendering, what is the basis of the assertion that the contract would have come to the claimant?

133. Accordingly, in the view of this Panel, for such a claim to warrant a recommendation, it is necessary to demonstrate by sufficient documentary and other appropriate evidence a history of successful (i.e., profitable) operation, and a state of affairs which warrants the conclusion that the hypothesis that there would have been future profitable contracts is well founded. Among other matters, it will be necessary to establish a picture of the assets that were being employed so that the extent to which those assets would continue to be productive in the future can be determined. Balance sheets for previous years will have to be produced, along with relevant strategy statements or like documents which were in fact utilised in the past. The current strategy statement will also have to be provided. In all cases, this Panel will be looking for contemporaneous documents rather than ones that have been formulated for the purpose of the claim; although the latter may have a useful explanatory or demonstrational role.

134. Such evidence is often difficult to obtain; and accordingly in construction cases such claims will only rarely be successful. And even where there is such evidence, the Panel is likely to be unwilling to extend the projected profitability too far into the future. The political exigencies of work in a troubled part of the world are too great to justify looking many years ahead.

## K. Loss of monies left in Iraq

### 1. Funds in bank accounts in Iraq

135. Numerous claimants seek to recover compensation for funds on deposit in Iraqi banks. Such funds were of course in Iraqi dinars and were subject to exchange controls.

136. The first problem with these claims is that it is often not clear that there will be no opportunity in the future for the claimant to have access to and to use such funds. Indeed, many claimants, in their responses to interrogatories or otherwise have modified their original claims to remove such elements, as a result of obtaining access to such funds after the initial filing of their claim with the Commission.

137. Second, for such a claim to succeed it would be necessary to establish that in the particular case, Iraq would have permitted the exchange of such funds into hard currency for the purposes of export. For this, appropriate evidence of an obligation to this effect on the part of Iraq is required. Furthermore, this Panel notes that the decision to deposit funds in banks located in particular countries is a commercial decision, which a corporation engaged in international operations is required to make. In making this decision, a corporation would normally take into account the relevant country or regional risks involved.

138. This Panel, in analysing the claims presented to it to date concludes that, in most cases, it will be necessary for a claimant to demonstrate (in addition to such matters as loss and quantum) that:

(a) the relevant Iraqi entity was under a contractual or other specific duty to exchange those funds for convertible currencies;

(b) Iraq would have permitted the transfer of the converted funds out of Iraq; and

(c) this exchange and transfer was prevented by Iraq's invasion and occupation of Kuwait.

139. Absent proof of these aspects of the matter, it is difficult to see how the claimant can be said to have suffered any "loss". If there is no loss, this Panel is unable to recommend compensation.

### 2. Petty cash

140. Exactly the same considerations apply to claims for petty cash left in Iraq in Iraqi dinars. These monies were left in the offices of claimants when they departed from Iraq. The circumstances in which the money was left behind vary somewhat; and the situation which thereafter obtained also varies - some claimants contending that they returned to Iraq but the monies were gone; and others being unable to return to Iraq and establish the position. In these different cases, the principle seems to this Panel to be the same. Claimants in Iraq needed to have available sums (which could be substantial) to meet liabilities which had to be discharged in cash. These sums necessarily consisted of Iraqi dinars. Accordingly, absent evidence of the same matters as are set out in paragraph 138, supra, it will be difficult to establish a "loss", and in those circumstances, this Panel is unable to recommend compensation.

### 3. Customs deposits

141. In this Panel's understanding, these sums are paid, nominally at least, as a fee for permission to effect a temporary importation of plant, vehicles or equipment. The recovery of these deposits is dependent on obtaining permission to export the relevant plant, vehicles and equipment.

142. The Panel further understands that such permission was hard to obtain in Iraq prior to Iraq's invasion and occupation of Kuwait. Accordingly, although defined as a temporary exaction, it was often permanent in fact, and no doubt contractors experienced in the subtleties of working in Iraq made suitable allowances. And no doubt they were able to, or expected to, recover these exactions through payment for work done. Once the invasion and occupation of Kuwait had occurred, obtaining s uch permission to export became appreciably harder. Indeed, given the trade embargo, a necessary element would have been the specific approval of the Security Council.

143. In the light of the foregoing, it seems to the Panel that claims to recover these duties need to be supported by sufficient evidentiary material, going to the issue of whether, but for Iraq's invasion and occupation of Kuwait, such permission would, in fact or on a balance of probabilities, have been forthcoming.

144. Absent such evidence and leaving aside any question of double-counting, (see paragraph 123, supra), the Panel is unlikely to be able to make any positive recommendations for compensating unrecovered customs deposits made for plant, vehicles and equipment used at construction projects in Iraq.

## L. Tangible property

145. With reference to losses of tangible property located in Iraq, decision 9 provides that where direct losses were suffered as a result of Iraq's invasion and occupation of Kuwait with respect to tangible assets, Iraq is liable for compensation (decision 9, paragraph 12). Typical actions of this kind would have been the expropriation, removal, theft or destruction of particular items of property by Iraqi authorities. Whether the taking of property was lawful or not is not relevant for Iraq's liability if it did not provide for compensation. Decision 9 furthermore provides that in a case where business property had been lost because it had been left unguarded by company personnel departing due to the situation in Iraq and Kuwait, such loss may be considered as resulting directly from Iraq's invasion and occupation (decision 9, paragraph 13).

146. Many of the construction and engineering claims that come before this Panel are for assets that were confiscated by the Iraqi authorities in 1992 or 1993. Here the problem is one of causation. By the time of the event, Iraq's invasion and occupation of Kuwait was over. Liberation was a year or more earlier. Numerous claimants had managed to obtain access to their sites to establish the position that obtained at that stage. In the cases the subject of this paragraph, the assets still existed. However, that initially satisfactory position was then overtaken by a general confiscation of assets by Iraqi authorities. While it sometimes seems to have been the case that this confiscation was triggered by an event which could be directly related to Iraq's invasion and occupation of Kuwait, in the vast majority of the claims that this Panel has seen, this was not the

case. It was simply the result of a decision on the part of the authorities to take over these assets. This Panel has difficulty in seeing how these losses were caused by Iraq's invasion and occupation of Kuwait. On the contrary, it appears that they stem from an wholly independent event and accordingly are outside the jurisdiction of the Commission.

### M. Payment or relief to others

147. Paragraph 21(b) of decision 7 specifically provides that losses suffered as a result of "the departure of persons from or their inability to leave Iraq or Kuwait" are to be considered the direct result of Iraq's invasion and occupation of Kuwait. Consistent with decision 7, therefore, the Panel finds that evacuation and relief costs incurred in assisting employees in departing from Iraq are compensable to the extent proven.

148. Paragraph 22 of Governing Council decision 7 provides that "payments are available to reimburse payments made or relief provided by corporations or other entities to others - for example, to employees, or to others pursuant to contractual obligations - for losses covered by any of the criteria adopted by the Council".

149. In the Fourth Report, this Panel found that the costs associated with evacuating and repatriating employees between 2 August 1990 and 2 March 1991 are compensable to the extent that such costs are proven by the claimant and are reasonable in the circumstances. Urgent temporary liabilities and extraordinary expenses relating to evacuation and repatriation, including transportation, food and accommodation, are in principle, compensable.

150. Many claimants do not provide a documentary trail detailing to perfection the expenses incurred in caring for their personnel and transporting them (and, in some instances, the employees of other companies who were stranded) out of a theatre of hostilities.

151. In these cases this Panel considers it appropriate to accept a level of documentation consistent with the practical realities of a difficult, uncertain and often hurried situation, taking into account the concerns necessarily involved. The loss sustained by claimants in these situations is the very essence of the direct loss suffered which is stipulated by Security Council resolution 687 (1991). Accordingly, the Panel uses its best judgement, after considering all relevant reports and the material at its disposal, to arrive at an appropriate recommendation for compensation.

# Annex IV

## Decision concerning the seventeenth instalment of E3 claims taken by the Governing Council of the United Nations Compensation Commission at its 105th meeting, held on 15 March 2001 at Geneva[*]

*The Governing Council*,

*Having received*, in accordance with article 38 of the Provisional Rules for Claims Procedure ("the Rules"), the report and recommendations made by the panel of Commissioners concerning the seventeenth instalment of "E3" claims, covering 15 claims, 1/

1. *Approves* the recommendations made by the panel of Commissioners, and, accordingly,

2. *Decides*, pursuant to article 40 of the Rules, to approve the amounts of the recommended awards concerning the claims covered in the report. The aggregate amounts per country, based on the recommendations contained in table 35 of the report, are as follows:

| Country | Number of claims recommended for payment | Number of claims not recommended for payment | Amount of compensation claimed (USD) | Amount of compensation recommended (USD) |
|---|---|---|---|---|
| France | 1 | - | 1,406,944 | 7,573 |
| Germany | 1 | - | 4,648,563 | 4,442,917 |
| India | 1 | 2 | 9,701,835 | 94,537 |

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[*] Previously issued as document S/AC.26/Dec.116 (2001).

1/ The text of the report appears in document S/AC.26/2001/2 (annex III above).

| Country | Number of claims recommended for payment | Number of claims not recommended for payment | Amount of compensation claimed (USD) | Amount of compensation recommended (USD) |
|---|---|---|---|---|
| Japan | - | 1 | 7,079,065 | nil |
| Poland | 1 | - | 2,672,886 | 26,346 |
| The former Yugoslav Republic of Macedonia | - | 1 | 4,132,643 | nil |
| Turkey | - | 2 | 7,381,649 | nil |
| United Kingdom | 1 | 1 | 1,793,329 | 47,105 |
| United States | 1 | 2 | 2,715,477 | 1,133,777 |
| Total | 6 | 9 | 41,532,391 | 5,752,255 |

3. Reaffirms that when funds become available payments shall be made in accordance with decision 100 (S/AC.26/Dec.100 (2000)).

4. Recalls that when payments are made in accordance with decision 100, and pursuant to the terms of decision 18 (S/AC.26/Dec.18 (1994)), Governments shall distribute amounts received to the designated claimants in respect of approved awards within six months of receiving payment, and shall, not later than three months after the expiration of this time limit, provide information on such distribution.

5. Requests the Executive Secretary to provide a copy of the report to the Secretary-General, to the Government of the Republic of Iraq and to each respective Government.

# Annex V

## Report and recommendations made by the Panel of Commissioners concerning the eighteenth instalment of E3 claims*

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* Previously issued as document S/AC.26/2001/3.

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## Introduction

1. The Governing Council of the United Nations Compensation Commission (the "Commission") appointed the present Panel of Commissioners (the "Panel"), composed of Messrs. Werner Melis (Chairman), David Mace and Sompong Sucharitkul, at its twenty-second session in October 1996 to review construction and engineering claims filed with the Commission on behalf of corporations and other legal entities in accordance with the relevant Security Council resolutions, the Provisional Rules for Claims Procedure (S/AC.26/1992/10) (the "Rules") and other Governing Council decisions. This report contains the recommendations to the Governing Council by the Panel, pursuant to article 38(e) of the Rules, concerning twelve claims included in the eighteenth instalment. Each of the claimants seeks compensation for loss, damage or injury allegedly arising out of Iraq's 2 August 1990 invasion and subsequent occupation of Kuwait. The claims submitted to the Panel in this instalment and addressed in this report were selected by the secretariat of the Commission from among the construction and engineering claims (the "E3 Claims") on the basis of criteria established under the Rules.

## I. PROCEDURAL HISTORY

### A. The nature and purpose of the proceedings

2. The status and functions of the Commission are set forth in the report of the Secretary-General pursuant to paragraph 19 of Security Council resolution 689 (1991) dated 2 May 1991 (S/22559). Pursuant to that report, the Commission is a fact-finding body that examines claims, verifies their validity, evaluates losses, recommends compensation, and makes payment of awards.

3. The Panel has been entrusted with three tasks in its proceedings. First, the Panel determines whether the various types of losses alleged by the claimants are within the jurisdiction of the Commission. Second, the Panel verifies whether the alleged losses are in principle compensable and had in fact directly resulted from Iraq's invasion and occupation of Kuwait. Third, the Panel determines whether these compensable losses were incurred in the amounts claimed.

### B. The procedural history of the claims in the eighteenth instalment

4. On 17 July 2000, the Panel issued a procedural order relating to the claims. None of the claims presented complex issues, voluminous documentation or extraordinary losses that would require the Panel to classify any of the claims as "unusually large or complex" within the meaning of article 38(d) of the Rules. The Panel thus decided to complete its review of the claims within 180 days of the date of 17 July 2000.

5. The Panel performed a thorough and detailed factual and legal review of the claims. The Panel considered the evidence submitted by the claimants in reply to requests for information and documents. It also considered Iraq's responses to the factual and legal issues raised in the thirtieth report of the Executive Secretary issued on 17 March 2000 in accordance with article 16 of the Rules.

6. After a review of the relevant information and documentation, the Panel made initial determinations as to the compensability of the loss elements of each claim. Pursuant to article 36 of the Rules, the Panel retained as its expert consultants accounting and loss adjusting firms, both with international and Persian Gulf experience, to assist the Panel in the quantification of losses incurred in large construction projects. The Panel then directed its expert consultants to prepare comprehensive valuation reports on each of the claims.

7. In drafting this report, the Panel has not included specific citations to restricted or non-public documents that were produced or made available to it for the completion of its work.

## C. Amending claims after filing

8. The Panel notes that the period for filing category "E" claims expired on 1 January 1996. The Governing Council permitted claimants to file unsolicited supplements up to and including 11 May 1998. A number of the claimants included in the eighteenth instalment had submitted several supplements to their claimed amount up to 11 May 1998. In this report, the Panel has taken into consideration such supplements up to 11 May 1998. The Panel has only considered those losses contained in the original claim, as supplemented by the claimants, up to 11 May 1998, except where such losses have been withdrawn or reduced by the claimants. Where the claimants reduced the amount of their losses the Panel has considered the reduced amount. This, however, does not preclude corrections relating to arithmetical and typographical errors.

## D. The claims

9. This report contains the Panel's findings for losses allegedly caused by Iraq's invasion and occupation of Kuwait with respect to the following claims:

(a) SHAL International, a division of SHAL Consulting Engineers, Inc., a corporation organised according to the laws of Canada, which seeks compensation in the amount of United States dollars (USD) 78,883;

(b) China Sichuan Corporation for International Techno-Economic Cooperation, a state-owned corporation organised according to the laws of China, which seeks compensation in the amount of USD 24,422;

(c) China Ningxia Islamic Corporation for International Economic and Technical Cooperation, a state-owned corporation organised according to the laws of China, which seeks compensation in the amount of USD 179,379;

(d) The Arab Contractors "Osman Ahmed Osman & Co", a joint stock public corporation organised according to the laws of Egypt, which seeks compensation in the amount of USD 7,582,359;

(e) Campenon Bernard, a partnership with legal personality ("société et nom collectif") organised according to the laws of France, which seeks compensation in the amount of USD 8,762,478;

(f) Brückner Grundbau GmbH, a corporation organised according to the laws of Germany, which seeks compensation in the amount of USD 3,961,045;

(g) Technika Hungarian Foreign Trading Company, a state-owned corporation organised according to the laws of Hungary, which seeks compensation in the amount of USD 414,640;

(h) Transinvest Engineering and Contracting Limited, a corporation organised according to the laws of Hungary, which seeks compensation in the amount of USD 407,159;

(i) Associated Consulting Engineers S.A.L., a corporation organised according to the laws of Lebanon, which seeks compensation in the amount of USD 1,721,162;

(j) Mouchel Consulting Limited, a corporation organised according to the laws of the United Kingdom of Great Britain and Northern Ireland, which seeks compensation in the amount of USD 1,167,318;

(k) Intergraph Corporation, a corporation organised according to the laws of the United States of America, which seeks compensation in the amount of USD 2,247,775; and

(l) Parsons, De Leuw, Inc., a corporation organised according to the laws of the United States of America, which seeks compensation in the amount of USD 1,265,503.

## II. LEGAL FRAMEWORK

### A. Applicable law

10. As set forth in paragraphs 16-18 and 23 of the "Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of 'E3' Claims" (S/AC.26/1998/13) (the "First Report"), the Panel determined that paragraph 16 of Security Council resolution 687 (1991) reaffirmed the liability of Iraq and defined the jurisdiction of the Commission. The Panel applied Security Council resolution 687 (1991), other relevant Security Council resolutions, decisions of the Governing Council, and, where necessary, other relevant rules of international law.

## B. Liability of Iraq

11. As set forth in paragraph 16 of the "Report and Recommendations Made by the Panel of Commissioners concerning the Third Instalment of 'E3' Claims (S/AC.26/1999/1) (the "Third Report"), the Panel determined that "Iraq" as used in decision 9 (S/AC.26/1992/9) means the Government of Iraq, its political subdivisions, or any agency, ministry, instrumentality or entity (notably public sector enterprises) controlled by the Government of Iraq. At the time of Iraq's invasion and occupation of Kuwait, the Government of Iraq regulated all aspects of economic life other than some peripheral agriculture, services and trade.

## C. The "arising prior to" clause

12. In paragraphs 79-81 of its First Report, the Panel adopted the following interpretation of the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991) with respect to contracts to which Iraq was a party:

(a) the phrase "without prejudice to the debts and obligations of Iraq arising prior to 2 August 1990, which will be addressed through normal mechanisms" was intended to have an exclusionary effect on the Commission's jurisdiction, i.e., that such debts and obligations could not be brought before the Commission;

(b) the period described by "arising prior to 2 August 1990" should be interpreted with due consideration to the purpose of the phrase, which was to exclude Iraq's existing bad debts from the Commission's jurisdiction;

(c) the terms "debts" and "obligations" should be given the customary and usual meanings applied to them in ordinary discourse; and

(d) the use of a three month payment delay period to define the jurisdictional period is reasonable and consistent both with the economic reality in Iraq prior to the invasion and with ordinary commercial practices.

13. The Panel finds that a claim relating to a "debt or obligation arising prior to 2 August 1990" means a debt for payment that is based on work performed or services rendered prior to 2 May 1990.

## D. Application of the "direct loss" requirement

14. The Governing Council's decision 7 (S/AC.26/1991/7/Rev.1), decision 9 (S/AC.26/1992/9) and decision 15 (S/AC.26/1992/15) provide specific instructions to the Panel regarding the interpretation of the "direct loss" requirement. Applying these decisions, the Panel examined the loss types presented in the claims to determine whether, with respect to each loss element, the requisite causal link - a "direct loss" - was present.

15. The Panel made the following findings regarding the meaning of "direct loss":

(a) with respect to physical assets in Iraq and in Kuwait on 2 August 1990, a claimant can prove a direct loss by demonstrating that the breakdown in civil order in those countries, which resulted from Iraq's invasion and occupation of Kuwait, caused the claimant to evacuate its employees and that the evacuation resulted in the abandonment of the claimant's physical assets;

(b) with respect to losses relating to contracts to which Iraq was a party, Iraq may not rely on force majeure or similar legal principles as a defence to its obligations under the contract;

(c) with respect to losses relating to contracts to which Iraq was not a party, a claimant may prove a direct loss if it can establish that Iraq's invasion and occupation of Kuwait or the breakdown in civil order in Iraq or Kuwait following the invasion caused the claimant to evacuate the personnel needed to perform the contract;

(d) costs incurred in taking reasonable steps to mitigate the losses incurred by the claimant are direct losses, bearing in mind that the claimant was under a duty to mitigate any losses that could reasonably be avoided after the evacuation of its personnel from Iraq or Kuwait; and

(e) the loss of use of funds on deposit in Iraqi banks is not a direct loss unless the claimant can demonstrate that Iraq was under a contractual or other specific duty to exchange those funds for convertible currencies and to authorize the transfer of the converted funds out of Iraq and that this exchange and transfer was prevented by Iraq's invasion and occupation of Kuwait.

## E. Loss of profits

16. In order to substantiate a claim for loss of profits, a claimant must prove that it had an existing contractual relationship at the time of the invasion. Second, a claimant must prove that the continuation of the relationship was rendered impossible by Iraq's invasion and occupation of Kuwait. Finally, profits should be measured over the life of the contract. A claimant must demonstrate that the contract would have been profitable as a whole. Thus, a claimant must demonstrate that it would have been profitable to complete the contract, not just that the contract was profitable at a single moment in time.

17. Calculations of a loss of profits claim should take into account the inherent risks of the particular project and the ability of a claimant to realize a profit in the past. The speculative nature of some projects requires the Panel to view the evidence submitted with a critical eye. In order to establish with "reasonable certainty" a loss of profits claim, the

Panel requires that a claimant submit not only the contracts and invoices related to the various projects, but also detailed financial statements, including audited statements where available, management reports, budgets, accounts, time schedules, progress reports, and a breakdown of revenues and costs, actual and projected, for the project.

### F. Date of loss

18. The Panel must determine "the date the loss occurred" within the meaning of Governing Council decision 16 (S/AC.26/1992/16) for the purpose of recommending compensation for interest and for the purpose of determining the appropriate exchange rate to be applied to losses stated in currencies other than in United States dollars. Where applicable, the Panel has determined the date of loss for each claim.

### G. Interest

19. According to decision 16 (S/AC.26/1992/16), "[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award." In decision 16 the Governing Council further specified that "[i]nterest will be paid after the principal amount of awards," while postponing decision on the methods of calculation and payment of interest.

20. The Panel finds that interest shall run from the date of loss, or, unless otherwise established, 2 August 1990.

### H. Currency exchange rate

21. While many of the costs incurred by the claimants were denominated in currencies other than United States dollars, the Commission issues its awards in that currency. Therefore, the Panel is required to determine the appropriate rate of exchange to apply to losses expressed in other currencies.

22. The Panel finds that the exchange rate set forth in the contract is the appropriate rate for losses under the relevant contracts because this was specifically bargained for and agreed to by the parties.

23. For non-contractual losses, the Panel finds the appropriate exchange rate to be the prevailing commercial rate, as evidenced by the United Nations Monthly Bulletin of Statistics on the date of loss, or, unless otherwise established, from 2 August 1990.

### I. Evacuation losses

24. In accordance with paragraph 21(b) of decision 7 of the Governing Council, the Panel finds that the costs associated with evacuating and repatriating employees from Iraq between 2 August 1990 and 2 March 1991 are

compensable to the extent that such costs are proven by the claimant. Compensable costs consist of temporary and extraordinary expenses relating to evacuation and repatriation, including transportation, food and accommodation.

### J. Valuation

25. The Panel developed, with the assistance of the secretariat and the Panel's expert consultants, a verification program that addresses each loss item. The valuation analysis used by the Panel's expert consultants ensures clarity and consistency in the application of certain valuation principles to the construction and engineering claims.

26. After receipt of all claim information and evidence, the Panel's expert consultants applied the verification program. Each loss element was analysed individually according to a set of instructions. The expert consultants' analysis resulted in a recommendation of compensation in the amount claimed, an adjustment to the amount claimed, or a recommendation of no compensation for each loss element. In those instances where the Panel's expert consultants were unable to respond decisively, the issue was brought to the attention of the Panel for further discussion and development.

27. For tangible property losses, the Panel adopted historical cost minus depreciation as its primary valuation method.

### K. Formal requirements

28. Claims submitted to the Commission must meet certain formal requirements established by the Governing Council. Article 14 of the Rules sets forth the formal requirements for claims submitted by corporations and other legal entities. If it is determined that a claim does not meet the formal requirements as set forth in article 14 of the Rules, the claimant is sent a notification under article 15 of the Rules (the "article 15 notification") requesting the claimant to remedy the deficiencies.

### L. Evidentiary requirements

29. Pursuant to article 35(3) of the Rules, corporate claims must be supported by evidence sufficient to demonstrate the circumstances and amount of the claimed loss. The Governing Council has made it clear in paragraph 5 of decision 15 that, with respect to business losses, there "will be a need for detailed factual descriptions of the circumstances of the claimed loss, damage or injury" in order to recommend compensation.

30. The category "E" claim form requires all corporations and other legal entities that have filed claims to submit with their claim form "a separate statement explaining its claim ('Statement of Claim'), supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and the amount of the claimed loss".

31. In those cases where the original submission of the claim inadequately supported the alleged loss, the secretariat prepared and issued a written communication to the claimant requesting specific information and documentation regarding the loss (the "article 34 notification"). In reviewing the subsequent submissions, the Panel noted that in many cases the claimant still did not provide sufficient evidence to support its alleged losses.

32. The Panel is required to determine whether these claims are supported by sufficient evidence and, for those that are so supported, must recommend the appropriate amount of compensation for each compensable claim element. This requires the application of relevant principles of the Commission's rules on evidence and an assessment of the loss elements according to these principles. The recommendations of the Panel are set forth below.

## III. SHAL INTERNATIONAL

33. SHAL International ("SHAL") is a division of SHAL Consulting Engineers, Inc., a corporation organised according to the laws of Canada that has carried out consulting work in Kuwait for 25 years.

34. In the "E" claim form, SHAL sought compensation in the amount of 90,889 Canadian dollars (CAD) (USD 78,883) for losses related to business transactions or course of dealing. The Panel reclassified this element of loss as other losses for the purposes of this report.

Table 1. SHAL's claim

| Claim element | Claim amount (USD) |
|---|---:|
| Other losses | 78,883 |
| Total | 78,883 |

### A. Other losses

#### 1. Facts and contentions

35. SHAL seeks compensation in the amount of CAD 90,889 (USD 78,883) for other losses allegedly incurred in connection with marketing activities undertaken in Kuwait between September 1988 and August 1990.

36. SHAL alleges that in the latter part of 1988 until the date of Iraq's invasion and occupation of Kuwait, it carried out extensive business development for a number of projects in Kuwait, resulting in the submission of tenders to the Ministry of Public Works of Kuwait and various visits to Kuwait.

37. In March 1990, SHAL was selected to submit tenders for two projects. SHAL states that it incurred expenses in the amount of CAD 90,889 between September 1988 and August 1990 in relation to the initial preparation and negotiation of these tenders, which were submitted to the Ministry of Public Works of Kuwait. No contracts were ever executed prior to Iraq's invasion and occupation of Kuwait.

#### 2. Analysis and valuation

38. As evidence of its claim for other losses, SHAL provided internally generated lists itemising the visits that it made to Kuwait and the expenses that it incurred in connection with the preparation of the tenders. It also provided its registration with the Ministry of Planning of Kuwait and confirmation of its ability to participate in the tender for one of the projects.

39. The Panel finds that SHAL's expenses were incurred solely in furtherance of its efforts to obtain contracts with the Ministry of Public Works of Kuwait for the two projects. The expenses represented an opportunity cost, which SHAL was never assured of recovering from the Ministry of Public Works of Kuwait, even if it had been successful in obtaining the contracts. In any event, no contracts were ever signed.

40. The Panel finds that the expenses are not compensable because such expenses are not losses which directly resulted from Iraq's invasion and occupation of Kuwait.

### 3. Recommendation

41. The Panel recommends no compensation for other losses.

## B. Recommendation for SHAL

Table 2. Recommended compensation for SHAL

| Claim element | Claim amount (USD) | Recommended compensation (USD) |
|---|---|---|
| Other losses | 78,883 | nil |
| Total | 78,883 | nil |

42. Based on its findings regarding SHAL's claim, the Panel recommends no compensation.

## IV. CHINA SICHUAN CORPORATION FOR INTERNATIONAL TECHNO-ECONOMIC COOPERATION

43. China Sichuan Corporation for International Techno-Economic Cooperation ("China Sichuan") is a state-owned corporation organised according to the laws of China. At the time of Iraq's invasion and occupation of Kuwait, China Sichuan provided engineering and technical labour services for Kuwaiti construction companies. China Sichuan seeks compensation in the amount of USD 24,422 for loss of tangible property.

Table 3. China Sichuan's claim

| Claim element | Claim amount (USD) |
|---|---:|
| Loss of tangible property | 24,422 |
| Total | 24,422 |

### A. Loss of tangible property

#### 1. Facts and contentions

44. China Sichuan seeks compensation in the amount of USD 24,422 for loss of tangible property. The claim is for the alleged loss of a number of household items and two cars located at China Sichuan's rental property in Kuwait. China Sichuan used the rental property as an office from March 1988 while it worked on various projects in Kuwait.

45. China Sichuan alleges that following Iraq's invasion and occupation of Kuwait, the tangible property located in the rental property was destroyed. It further alleges that its employees were forced to leave Kuwait as a result of Iraq's invasion and occupation of Kuwait.

#### 2. Analysis and valuation

46. China Sichuan provided as evidence of its alleged losses 17 original invoices. The invoices show that all of the items of property were purchased in 1989 and 1990 in Kuwait. Although it is not clear from the translations of the invoices whether they were made out to China Sichuan, China Sichuan provided confirmation that the employees who authorised the purchase of the items did so on behalf of China Sichuan, that the invoices were genuine, and that China Sichuan owned the items. The Panel finds that China Sichuan provided sufficient evidence of its title to or right to use, and the presence in Kuwait of, the items of tangible property.

47. The Panel finds that China Sichuan incurred the alleged losses as a direct result of Iraq's invasion and occupation of Kuwait.

48. In relation to the date of loss, the Panel accepts China Sichuan's assertion that 2 August 1990 is the date of loss.

49. The Panel requested its expert consultants to perform a valuation of the losses. The Panel's expert consultants applied depreciation rates appropriate for such items and concluded that the items had a value of USD 21,396 as at 2 August 1990. The Panel accepts the expert consultants' conclusion.

### 3. Recommendation

50. The Panel recommends compensation in the amount of USD 21,396 for loss of tangible property.

## B. Recommendation for China Sichuan

Table 4. Recommended compensation for China Sichuan

| Claim element | Claim amount (USD) | Recommended compensation (USD) |
|---|---|---|
| Loss of tangible property | 24,422 | 21,396 |
| Total | 24,422 | 21,396 |

51. Based on its findings regarding China Sichuan's claim, the Panel recommends compensation in the amount of USD 21,396. The Panel finds the date of loss to be 2 August 1990.

## V. CHINA NINGXIA ISLAMIC CORPORATION FOR INTERNATIONAL ECONOMIC AND TECHNICAL COOPERATION

52. China Ningxia Islamic Corporation for International Economic and Technical Cooperation ("China Ningxia") is a state-owned corporation organised according to the laws of China. China Ningxia operates in the construction industry.

53. In the "E" claim form, China Ningxia sought compensation in the amount of 42,571 Kuwaiti dinars (KWD) and USD 32,076 (total amount in United States dollars of USD 179,379) for losses related to business transactions or course of dealing, contract losses, loss of tangible property, payment or relief to others and interest.

54. The Panel has reclassified elements of China Ningxia's claim for the purposes of this report. The Panel therefore considered the amount of KWD 42,571 and USD 32,076 (total amount in United States dollars of USD 179,379) for contract losses, loss of profits, loss of tangible property, payment or relief to others and interest, as follows:

Table 5. China Ningxia's claim

| Claim element | Claim amount (USD) |
|---|---:|
| Contract losses | 121,148 |
| Loss of profits | 10,381 |
| Loss of tangible property | 15,774 |
| Payment or relief to others | 32,076 |
| Interest (no amount specified) | (--) |
| Total | 179,379 |

### A. Contract losses

### 1. Facts and contentions

55. China Ningxia seeks compensation in the amount of KWD 35,012 (USD 121,148) for contract losses allegedly incurred in connection with two sub-contracts for the supply of labour to Kuwaiti parties. China Ningxia asserts that Iraq's invasion and occupation of Kuwait interrupted its performance under these sub-contracts.

56. China Ningxia originally classified the claim for contract losses as "losses related to business transactions or course of dealing", but the losses are more appropriately dealt with as contract losses.

(a) Sub-contract with Sibwan

57. China Ningxia entered into a sub-contract with Sibwan General Trading and Contracting Co. of Kuwait ("Sibwan") on 5 February 1988 to perform repair work on the facades of houses in the Al-Dahar Housing Area in Kuwait for the Kuwait National Housing Authority.

58. China Ningxia alleges that as a result of Iraq's invasion and occupation of Kuwait, work on the construction of the houses could not continue. China Ningxia alleges that Sibwan paid it KWD 14,100. However, Sibwan did not pay what appears to be the balance of the amount owed, KWD 23,162. China Ningxia alleges that subsequent to and consequent upon Iraq's invasion and occupation of Kuwait, Sibwan became bankrupt.

59. In its reply to the article 34 notification, China Ningxia stated that the contract sum and the commencement dates were not expressed in the executed sub-contract. However, it stated that work commenced at the time the sub-contract was signed. China Ningxia asserted that because of the complexity of the project, Sibwan agreed to pay China Ningxia for the works, as and when China Ningxia completed the works.

(b) Sub-contract with Aziz

60. China Ningxia entered into a sub-contract with Aziz Constructions Co. of Kuwait ("Aziz") on 12 September 1989 to perform repair works.

61. China Ningxia alleges that it was forced to cease operations as a result of Iraq's invasion and occupation of Kuwait. China Ningxia seeks compensation in the amount of KWD 11,850, representing the outstanding amount which Aziz owes China Ningxia for work performed. China Ningxia alleges that subsequent to and consequent upon Iraq's invasion and occupation of Kuwait, Aziz became bankrupt.

62. China Ningxia provided what appears to be the sub-contract with Aziz. However, the document has not been translated. Accordingly, the Panel was unable to determine the contractual terms of payment. In its reply to the article 34 notification, China Ningxia states that the contract sum and the commencement dates were not expressed in the signed contract. However, it stated that work commenced at the time the sub-contract was signed. It also provided a summary of the invoices it rendered in the amount of KWD 26,429. China Ningxia asserted that because of the complexity of the project, Aziz agreed to pay China Ningxia for the works, as and when China Ningxia completed the works.

### 2. Analysis and valuation

63. China Ningxia failed to provide a complete copy of the sub-contract with Sibwan. It provided a few invoices in support of its claim. The last translated invoice which it provided is dated 12 July 1989.

64. China Ningxia failed to provide a translation of the sub-contract with Aziz or of the invoices. As such, the Panel was unable to verify that the work was actually performed or, if so, when the work was performed.

65. This Panel has found that a claimant must provide specific proof that the failure of a Kuwaiti debtor to pay was a direct result of Iraq's invasion and occupation of Kuwait. To meet this requirement, a claimant must demonstrate, for example, that a business debtor was rendered unable to pay due to insolvency or bankruptcy caused by the destruction of its business during Iraq's invasion and occupation of Kuwait, or that the business debtor was otherwise entitled to refuse to pay the claimant. China Ningxia did not supply such proof.

66. The Panel finds that China Ningxia did not demonstrate that its losses under both sub-contracts were the direct result of Iraq's invasion and occupation of Kuwait. In relation to the sub-contract with Sibwan, the Panel finds that China Ningxia performed the work well before 2 August 1990. In relation to the sub-contract with Aziz, there is insufficient evidence of performance of the work.

67. Further, China Ningxia failed to demonstrate that the failure of the Kuwaiti contractors to pay the amounts due and owing was a direct result of Iraq's invasion and occupation of Kuwait.

### 3. Recommendation

68. Based on its findings in paragraphs 66-67, supra, the Panel recommends no compensation for contract losses.

## B. Loss of profits

### 1. Facts and contentions

69. China Ningxia seeks compensation in the amount of KWD 3,000 (USD 10,381) for loss of profits. This represents the value of China Ningxia's work under its sub-contract with Aziz for repair work on five flats in Kuwait commencing on 25 July 1990.

70. China Ningxia originally classified this part of the claim as "contract losses", but the losses are more appropriately dealt with as loss of profits.

### 2. Analysis and valuation

71. The requirements to substantiate a loss of profits claim have been stated by the Panel in paragraphs 16 and 17, supra.

72. In support of its claim, China Ningxia provided two internally generated tables. The first table was not translated. The second table contained lists of numbers without reference to their significance. In the article 34 notification, China Ningxia was asked to provide evidence such

as the contract, audited financial statements, budgets, management accounts, or turnover prepared by or on behalf of China Ningxia. It did not provide any of this information.

73. The Panel recommends no compensation as China Ningxia failed to provide sufficient evidence to substantiate its loss of profits claim.

### 3. Recommendation

74. The Panel recommends no compensation for loss of profits.

## C. Loss of tangible property

### 1. Facts and contentions

75. China Ningxia seeks compensation in the amount of KWD 4,559 (USD 15,774) for loss of tangible property. The claim is for the alleged loss of tangible property in Kuwait purchased from 1988 onwards.

76. China Ningxia alleges that because its employees had to return to China on 21 August 1990, all of its property was lost. China Ningxia did not return to Kuwait after Kuwait's liberation.

### 2. Analysis and valuation

77. China Ningxia provided as evidence of its alleged losses two undated internally generated "bills of quantity" of the items that were allegedly lost as a result of Iraq's invasion and occupation of Kuwait. China Ningxia stated that the purchase invoices were destroyed during Iraq's invasion and occupation of Kuwait. China Ningxia did not provide any other evidence to establish ownership.

78. The Panel finds that China Ningxia did not submit evidence which demonstrated its title to or right to use the assets, and the value and the presence of the tangible property in Kuwait. The Panel finds that China Ningxia failed to submit sufficient evidence to substantiate its loss of tangible property claim.

### 3. Recommendation

79. The Panel recommends no compensation for loss of tangible property.

## D. Payment or relief to others

### 1. Facts and contentions

80. China Ningxia seeks compensation in the amount of USD 32,076 for payment or relief to others. The claim is for the alleged costs of repatriating 18 of its employees to China as a result of Iraq's invasion and occupation of Kuwait (USD 24,876), and payments to the employees from a "life relief fund" (USD 7,200).

81. China Ningxia alleges that the cost of repatriating its 18 employees amounted to USD 23,976 for airfares and war risk insurance. China Ningxia alleges that it also incurred costs in the amount of USD 900 on behalf of its 18 employees for domestic travel costs when they returned to China. China Ningxia further states that upon their return, the 18 employees were unable to find work in China. As a result, China Ningxia allegedly paid each of the 18 employees the amount of USD 400 from a "life relief fund" for a total amount of USD 7,200.

### 2. Analysis and valuation

82. China Ningxia provided as evidence of its alleged losses an internally generated list of the personnel who were repatriated to China, including relevant identification details. In relation to the life relief fund, China Ningxia also provided documentation signed by the employees showing that they had received the claimed amounts from China Ningxia. China Ningxia did not, however, explain whether it was legally or contractually required to pay its employees these amounts, in lieu of, for example, a notice period, and would, therefore, have not incurred these costs under normal circumstances.

83. In relation to the airfares, China Ningxia also provided a certificate dated 26 April 2000, which certifies that, according to arrangements put into place by the Government of the People's Republic of China, Air China undertook to meet and transport China Ningxia's 18 Chinese employees from Kuwait to China after Iraq's invasion and occupation of Kuwait. However, China Ningxia did not provide any evidence of proof of payment in support of this loss element.

84. China Ningxia provided no evidence in relation to the domestic travel costs.

85. The Panel finds that, in relation to the airfares, the war risk insurance and the domestic travel costs, China Ningxia did not provide proof of payment. The Panel therefore recommends no compensation.

86. In relation to the life relief fund, the Panel finds that China Ningxia failed to demonstrate that this alleged loss was suffered as a direct result of Iraq's invasion and occupation of Kuwait. Accordingly, the Panel recommends no compensation.

### 3. Recommendation

87. The Panel recommends no compensation for payment or relief to others.

## E. Interest

88. As the Panel recommends no compensation, there is no need for the Panel to determine the date of loss from which interest would accrue.

## F. Recommendation for China Ningxia

Table 6. Recommended compensation for China Ningxia

| Claim element | Claim amount (USD) | Recommended compensation (USD) |
|---|---|---|
| Contract losses | 121,148 | nil |
| Loss of profits | 10,381 | nil |
| Loss of tangible property | 15,774 | nil |
| Payment or relief to others | 32,076 | nil |
| Interest (no amount specified) | (--) | nil |
| Total | 179,379 | nil |

89. Based on its findings regarding China Ningxia's claim, the Panel recommends no compensation.

## VI. THE ARAB CONTRACTORS "OSMAN AHMED OSMAN & CO."

90. The Arab Contractors "Osman Ahmed Osman & Co." ("Osman") is an joint stock public corporation organised according to the laws of Egypt. Osman operates as a contractor.

91. Osman did not file an "E" claim form. Osman originally filed an undated memorandum, in which it sought compensation in the amount of KWD 2,209,636 (USD 7,582,359) for losses associated with an arbitral award, financing charges and financial losses.

92. In the article 15 notification, the secretariat requested Osman to provide an "E" claim form. On 30 March 1999, the Commission received an "E" claim form dated 31 March 1997, in which Osman sought compensation in United States dollars, not Kuwaiti dinars as previously, in the amount of USD 14,508,425. Osman claimed for loss of tangible property and other losses, including a new claim for interest in the amount of USD 6,926,066 on the loss elements which it had claimed previously.

93. The Panel has only considered those losses contained in the original claim, except where such losses have been withdrawn or reduced by Osman. The Panel considers the original claim amount to be that contained in the undated memorandum, and not the "E" claim form. Although the "E" claim form is dated 31 March 1997, it was received by the Commission two years later, well after the date permitted for filing supplements (see paragraph 8, supra).

94. The Panel has reclassified some elements of Osman's losses for the purposes of this report. The Panel therefore considered the amount of KWD 2,209,636 (USD 7,582,359) for loss of tangible property, financial losses and other losses, as follows:

Table 7. Osman's claim

| Claim element | Claim amount (USD) |
|---|---:|
| Loss of tangible property | 543,034 |
| Financial losses | 2,475,434 |
| Other losses | 4,563,891 |
| Total | 7,582,359 |

### A. Loss of tangible property

#### 1. Facts and contentions

95. Osman seeks compensation in the amount of KWD 158,250 (USD 543,034) for loss of tangible property in Kuwait. The claim is for the alleged loss of documents and cash, which were stored in the company safe; the contents

of Osman's stores, offices and employees' residences; and damage to vehicles and equipment which were on site in Kuwait. It is not clear what contracts Osman was carrying out at the time of Iraq's invasion and occupation of Kuwait leading to the presence of the items of tangible property in Kuwait. The Panel notes a reference in a guarantee which Osman relies upon in its claim for financial losses in paragraphs 102-108, infra, to a contract with the Ministry of Defence of Kuwait (the "Ministry").

96. Osman alleges that as a result of Iraq's invasion and occupation of Kuwait, its tangible property was either destroyed or looted. Osman maintains that it was not possible to protect, remove or relocate the property because of the evacuation of its employees.

97. Osman originally classified the claim for loss of and damage to items and documents as "financial losses", but the claim is more appropriately classified as a claim for tangible property losses.

### 2. Analysis and valuation

98. Osman provided as evidence of its alleged losses a copy of its letter dated 2 February 1993 to the Egyptian Ministry of Foreign Affairs attaching a copy of the inventory of Osman's property at its branch stores in Kuwait. Osman stated that the inventory was prepared on 9 April 1988. Osman provided no invoices or other independent documentation in support of the alleged losses. It provided no information as to how the property was lost or damaged, or how the alleged loss was linked to Iraq's invasion and occupation of Kuwait.

99. In its reply to the article 34 notification, Osman provided copies of the company's balance sheets for the periods ending 30 June 1989 and 30 June 1990. The only fixed assets with a value on the balance sheet were "means of transport". The amounts stated on the balance sheets do not correspond with the amounts detailed in Osman's undated memorandum.

100. The Panel finds that Osman failed to provide sufficient evidence which demonstrated its title to or right to use the assets, and the value and the presence of the tangible property in Kuwait.

### 3. Recommendation

101. The Panel recommends no compensation for loss of tangible property.

## B. Financial losses

### 1. Facts and contentions

102. Osman seeks compensation in the amount of KWD 721,386 (USD 2,475,434) for financial losses. The losses represent financing charges allegedly incurred between 2 August 1990 and November 1992 on three letters of guarantee in connection with contracts entered into with the Ministry.

103. Osman alleges that the guarantees should have been cancelled after it completed its contractual obligations to the Ministry. Osman did not state when these obligations were completed. However, according to Osman, the guarantees were not cancelled because Kuwait's banking system was disrupted by Iraq's invasion and occupation of Kuwait.

104. Osman originally classified the claim for financial losses as "financing charges", but they are more appropriately classified as financial losses.

### 2. Analysis and valuation

105. As evidence of its alleged losses in respect of the guarantees, Osman provided a letter dated 9 September 1989 from the Al-Ahli Bank of Kuwait to Osman, stating that the balance of a guarantee provided by the bank and "credited" to Osman was still enforceable. Osman also provided a letter dated 19 September 1989 from the Ministry to the Al-Ahli Bank requesting the bank to extend the value of the guarantee for a period of three months commencing on 25 September 1989.

106. The evidence provided indicates that Osman concluded work under the contracts well before 2 August 1990. Osman provided no explanation as to why the letters of guarantee were outstanding as of 2 August 1990. Nor did Osman provide any evidence of a connection between financing charges incurred after this date pursuant to the letters of guarantee and Iraq's invasion and occupation of Kuwait. Finally, Osman did not provide evidence of the financing charges that it allegedly incurred.

107. The Panel finds that Osman did not submit sufficient evidence to support its claim for alleged financial losses. Moreover, Osman failed to demonstrate that the alleged losses were suffered as a direct result of Iraq's invasion and occupation of Kuwait.

### 3. Recommendation

108. The Panel recommends no compensation for financial losses.

## C. Other losses

### 1. Facts and contentions

109. Osman seeks compensation in the amount of KWD 1,330,000 (USD 4,563,891) for other losses. The claim is for the interest on an arbitral award dated 17 June 1989 in favour of Osman against the Ministry. Osman states that it was unable to enforce the award until 5 March 1992.

110. Osman entered into three contracts with the Ministry between 1978 and 1983 for the construction of barracks. There was a dispute between the parties about Osman's alleged delays in completing the work, which resulted in the Ministry's refusal to pay Osman. In 1983, Osman commenced

proceedings against the Ministry, in the total amount of KWD 16,248,708, before the "Board of Arbitration" of Kuwait. On 17 June 1989, the Board of Arbitration issued an award in favour of Osman. The value of the award was KWD 7,000,000, along with the release of a bank guarantee valued at KWD 349,177. In a judgment dated 16 April 1990, the Plenary Court of Justice of Kuwait rejected an appeal by the Ministry.

111. Osman alleges that it was in the process of securing the necessary documentation to enable it to enforce the award when Iraq's invasion and occupation of Kuwait intervened. Osman alleges that Iraq's invasion and occupation of Kuwait prevented it from enforcing the award against the Ministry until 5 March 1992. The Ministry refused to pay interest on the award between 2 August 1990 and 5 March 1992. Osman, therefore, seeks compensation for this interest.

112. Osman originally classified the claim for interest on the award as losses associated with an award, but it is more appropriately classified as other losses.

### 2. Analysis and valuation

113. As evidence of its alleged losses, Osman provided copies of the award of 17 June 1989, the judgment of the Plenary Court of Justice dated 16 April 1990 and a letter dated 5 May 1990 from the Ministry of Justice of Kuwait confirming the rejection of the Ministry's appeal.

114. The debts which are the subject of the arbitral award arose in 1983. The Board of Arbitration made its award in June 1989 and the Plenary Court rejected the Ministry's appeal on 16 April 1990. The timing of these events indicates that Osman's alleged inability to obtain payment of the award itself until 1992 was not a direct result of Iraq's invasion and occupation of Kuwait. Rather, the delay was due to legal processes in Kuwait between 1983 and 1990. Osman failed to explain the delays in the litigation between 1983 and 1989/1990. Further, Osman did not provide sufficient evidence of its assertion that the reason for its inability to enforce the award following the judgment of 16 April 1990 prior to Iraq's invasion and occupation of Kuwait was its endeavour to secure the necessary documentation.

115. In any event, the Panel also notes that in its reply to the article 34 notification regarding the issue of why the Ministry did not pay interest to Osman on the award, Osman stated that the Ministry had asserted that the delay in implementing payment of the award and associated interest was due to Iraq's invasion and occupation of Kuwait. Further, the Ministry asked Osman to agree to the enforcement of the judgment of 16 April 1990 without payment of the interest which accrued between 16 April 1990 and 5 March 1992, in order to avoid delay in receipt of the principal amount of the award. Osman accepted this proposal. The Panel finds that Osman made a commercial decision not to insist on payment of the interest by the

Ministry in order to secure timely payment of the principal amount of the award.

116. Ultimately, however, the Panel finds that Osman failed to provide evidence of why it was unable to enforce the award of 17 June 1989 or the judgment of 16 April 1990 prior to Iraq's invasion and occupation of Kuwait, thereby failing to establish the requisite causal connection between Osman's loss and Iraq's invasion and occupation of Kuwait.

### 3. Recommendation

117. The Panel recommends no compensation for other losses.

## D. Recommendation for Osman

Table 8. Recommended compensation for Osman

| Claim element | Claim amount (USD) | Recommended compensation (USD) |
|---|---:|---:|
| Loss of tangible property | 543,034 | nil |
| Financial losses | 2,475,434 | nil |
| Other losses | 4,563,891 | nil |
| Total | 7,582,359 | nil |

118. Based on its findings regarding Osman's claim, the Panel recommends no compensation.

## VII. CAMPENON BERNARD

119. Campenon Bernard, formerly known as Campenon Bernard SGE ("Campenon"), is a partnership with legal personality ("société en nom collectif") organised according to the laws of France, operating in the construction industry.

120. In the "E" claim form, Campenon sought compensation in the amount of KWD 2,532,314 (USD 8,762,478) for other losses. The Panel reclassified the claim for other losses as financial losses, interest and claim preparation costs for the purposes of this report, as follows:

Table 9. Campenon's claim

| Claim element | Claim amount (USD) |
|---|---|
| Financial losses | 7,000,000 |
| Interest | 1,762,478 |
| Claim preparation costs (no amount specified) | (--) |
| Total | 8,762,478 |

121. Campenon stated that it has received compensation in the amount of USD 1,201,781 from Credit Agricole Indosuez ("Indosuez"), a French bank. Indosuez was involved in the transaction which Campenon alleges led to losses giving rise to its claim before the Commission. The payment of compensation was made following arbitration proceedings between Campenon's parent company and Indosuez. Campenon did not take this payment into account in its calculation of the total amount of its claim before the Commission.

### A. Financial losses

#### 1. Facts and contentions

122. Campenon seeks compensation in the amount of KWD 2,022,958 (USD 7,000,000) for financial losses. The losses were allegedly incurred in connection with a contract to construct the Jahra Ghazali Motorway Project in Kuwait (the "Project"). Campenon alleged that it borrowed Kuwaiti dinar funds in order to finance the Project. It further alleged that in an attempt to repay the monies in 1990, Campenon's parent company, then called Société Générale d'Entreprises ("SGE"), "unknowingly and in good faith" purchased Kuwaiti dinars which had been stolen from Kuwait by the Iraqi forces. The creditor refused to accept the Kuwaiti dinars which were tendered on the basis that they were stolen. Campenon seeks compensation for the value of these Kuwaiti dinars.

123. A chronology of the principal events giving rise to Campenon's claim follows.

(a) Financing of the Project

124. Campenon alleged that it obtained financing for the Project from the National Bank of Kuwait (the "NBK") in the amount of KWD 16,500,000. Campenon states that repayment of KWD 11,000,000 of the borrowed funds was due on 16 August 1990. Repayment of the balance, KWD 5,500,000, was due on 26 May 1992. An important term of the loan agreements required Campenon to repay the loan in Kuwaiti dinars only.

(b) Consequences of Iraq's invasion and occupation of Kuwait for the Kuwaiti monetary system

125. After Iraq's invasion of Kuwait, there was considerable confusion in the financial markets about the ability of Kuwait's primary financial institutions such as the NBK to operate, including their ability to accept repayments of loans.

126. Campenon alleged that on 1 October 1990, the London office of the NBK confirmed that branch offices of the NBK outside of Kuwait were authorised during the period of Iraq's invasion and occupation of Kuwait to discharge international obligations owing to the NBK. It appears from the information provided by Campenon that it was not until this point that Campenon and SGE commenced their efforts to obtain Kuwaiti dinars to repay the NBK. It also appears to the Panel that the NBK advised Campenon that it was prepared to accept early repayment of the monies which were not due until 1992.

(c) Response of Kuwaiti authorities to theft of notes

127. On 7 October 1990, the Amir of Kuwait issued Decree Law No. 2A of 1990 (the "Decree"), wherein he announced Kuwait's intention to 'demonetise' certain Kuwaiti dinar notes in view of the fact that Iraqi occupying forces had stolen those bank notes from the vaults of the Central Bank of Kuwait (the "CBK") and placed them into circulation. The Amir declared that the CBK was not bound to honour such notes. To implement the Decree, the Amir directed the Minister of Finance of Kuwait to determine those serial numbers and denominations of Kuwaiti dinar bank notes which were considered to have been stolen, based on information supplied by the Governor of the CBK. In response to the Decree, the Acting Minister of Finance of Kuwait issued Ministerial Resolution No. 1A/90 on 7 October 1990 (the "First Resolution"). The First Resolution identified the serial numbers of KWD 20, 10 and 5 notes as having been stolen by the Iraqi forces. The First Resolution also indicated that the Kuwaiti dinar notes listed would not be honoured for payment. This consequence was commonly referred to as 'demonetisation' and stolen notes consequently not honoured as 'demonetised notes'.

128. Campenon alleged that the First Resolution did not provide any notice with respect to Kuwaiti dinar notes of other denominations, including one dinar notes.

(d) SGE's purchase of Kuwaiti dinar notes

129. In November 1990, SGE purchased approximately 16,500,000 Kuwaiti dinars from a number of sellers in order to satisfy Campenon's obligations to the NBK. The dinars were denominated in 20, 10, 5, 1, ½ and ¼ dinar bank notes. An amount of KWD 3,000,000 in one Kuwaiti dinar notes was purchased from the Geneva branch of Indosuez. Campenon's claim concerns the dinars purchased from Indosuez.

130. The transaction leading to the purchase from Indosuez was initiated when SGE, Indosuez and several companies incorporated in the United Kingdom signed a series of agreements for the purchase of Kuwaiti dinars (the "Purchase Agreements") in November 1990. Each of the agreements contained a similar warranty clause in the following terms:

> "The Supplier of the Kuwait Dinar [sic] has warranted to [Indosuez]...that all of the Kuwaiti Dinars which will be offered for sale pursuant to this sale agreement were valid legal tender in the Kingdom of Kuwait prior to the invasion of such country by the Republic of Iraq in August 1990, and in particular warrants that none of the Kuwaiti Dinars bear serial numbers relating to currency notes which have been disowned by the Kuwaiti Government-in-exile all as more fully set forth in Exhibit Two to this Agreement"

131. One of the companies incorporated in the United Kingdom agreed to act as intermediary and purchase the notes from Indosuez and then resell them to SGE through intermediaries. SGE and one of the other intermediaries guaranteed the company's obligations pursuant to a Security Agreement.

132. The Purchase Agreements included an exhibit that listed the Kuwaiti dinars which had been demonetised by the Kuwaiti Government-in-exile. In particular, the exhibit identified the series of 10, 20, and 50 dinar notes which had been demonetised by the Kuwaiti Government in the First Resolution. The Panel observes that in fact, the series of 50 dinar notes actually referred to five dinar notes.

133. The transaction at issue before the Panel is the delivery on 27 November 1990 of notes in the amount of 3,000,000 dinars to Campenon at the Geneva office of Indosuez. All of the dinars were in the form of one dinar notes. Campenon/SGE appear to have purchased the notes at this time. Campenon did not state what price it paid for the notes.

134. Campenon conceded that it was aware of the Decree and the First Resolution of 7 October 1990 and as such, Campenon/SGE made every effort to ensure that 20, 10 and 5 Kuwaiti dinar notes purchased in November 1990

were not among those identified in the First Resolution. Campenon further stated that, with the assistance of Indosuez, it checked with numerous Kuwaiti governmental sources and European central and private banking sources to ensure that no demonetisation had been announced with respect to smaller denomination notes.

135. Accordingly, Campenon stated that it and SGE believed in good faith that the amount of KWD 3,000,000 in one dinar notes, which Campenon/SGE purchased on 27 November, were valid notes.

(e) The Second Resolution

136. On 28 November 1990, the acting Minister of Finance of Kuwait issued a second Ministerial Resolution (the "Second Resolution"). The Second Resolution identified a series of one Kuwaiti dinar notes as having been stolen by the Iraqi forces, which included a large proportion of the notes purchased by Campenon/SGE on 27 November 1990. Campenon said it did not become aware of the Second Resolution until mid-April 1991.

(f) Campenon's attempt to repay loan

137. Campenon tendered the amount of approximately KWD 16,500,000 to the NBK in London in December 1990. The NBK refused to accept the payment.

138. Campenon alleged that by a letter dated 7 January 1991, the NBK informed Campenon that the CBK had denied the NBK the authority to accept the currency tendered to the NBK by Campenon. It appears that the NBK and the CBK considered that some or all of the Kuwaiti notes tendered to the NBK were stolen.

139. In March 1991, the Kuwaiti Government enacted an exchange program for its old currency which was publicised in an announcement by the CBK. All old Kuwaiti dinars were turned into the CBK in exchange for newly issued Kuwaiti dinars. The old Kuwaiti dinars, which were identified by the CBK as stolen, were cancelled. Campenon alleged that the announcement referred to a "decree" and that this decree listed, for the first time, serial numbers for cancelled one dinar notes. The Panel has reviewed the announcement and concludes that the decree referred to is the Second Resolution.

140. Campenon transferred the Kuwaiti dinar notes it was holding to the Bank of Kuwait and the Middle East, a subsidiary of the NBK, for tender to the NBK. Campenon alleged that following the liberation of Kuwait, the NBK accepted KWD 14,608,717 of the tendered notes but informed Campenon that notes in the amount of KWD 2,024,779 were cancelled because they were among those notes demonetised by the Kuwaiti authorities. KWD 2,022,958 of the amount of KWD 2,024,779 was denominated in cancelled one dinar notes.

### (g) Legal proceedings between Campenon and the NBK

141. Campenon alleged that the NBK refused to accept the cancelled Kuwaiti one dinar notes in payment for its debt. As such, if the NBK's stance was correct, the demonetised Kuwaiti dinars totalling KWD 2,022,958 were rendered worthless. Campenon brought proceedings against the NBK in the Tribunal de Commerce de Paris in September 1992. In those proceedings, Campenon sought an order compelling the NBK to accept the demonetised Kuwaiti dinars. The NBK brought parallel litigation in Kuwait against SGE in October 1992 seeking payment of the outstanding amount.

142. The parties settled their respective proceedings pursuant to an Amicable Settlement dated 5 December 1994. The principal term of this document was SGE's agreement to pay to the NBK the amount of USD 7,000,000 representing the outstanding amount due to the NBK. This figure was agreed to represent the United States dollar equivalent of KWD 2,022,958.

### (h) Arbitral proceedings between SGE and Indosuez

143. SGE then sought to recover its alleged losses by commencing an arbitral proceeding against Indosuez before a tribunal of the ICC International Court of Arbitration in 1996 (the "ICC Tribunal").

144. SGE alleged before the Tribunal that virtually all of the one dinar notes that it purchased and which the NBK refused to accept were part of the delivery from Indosuez on 27 November 1990. SGE alleged that Indosuez was responsible for having supplied stolen notes and, as a result, sought damages for breach of contract.

145. The ICC Tribunal made an award in 1998 in which it ordered Indosuez to pay SGE the amount of USD 1,000,000 plus interest at 5 per cent per annum for the breach of contract by Indosuez. It appears that Indosuez paid Campenon this amount of the award (USD 1,201,781). Campenon did not take this payment into account in the calculation of the total amount of its claim before the Commission.

## 2. Analysis and valuation

146. As evidence of its alleged losses, Campenon provided, inter alia, the following documents: copies of the loan agreements between itself and the NBK; correspondence with NBK; correspondence with the British Bankers' Association; the Decree; the First Resolution; the Amicable Settlement; the award of the ICC Tribunal; the Security Agreement; the Purchase Agreements; and confirmation of receipt from Indosuez of the quantity and authenticity of bank notes.

147. In the article 34 notification, Campenon was asked to provide all correspondence or notes of dealings between Campenon and Indosuez during the key period between October and December 1990. Campenon did not provide all of the information requested. It did provide evidence confirming the

delivery date of the demonetised notes. It did not provide sufficient evidence to assess the actual purchase price of the demonetised notes which SGE purchased.

148. The Panel finds that there is substantial general evidence of theft of Kuwaiti dinars from the CBK, and substantial evidence specific to this claim, to establish that the Kuwaiti dinars for which Campenon seeks compensation were stolen by the Iraqi forces from the CBK.

149. Nevertheless, the fact that the stolen currency was ultimately purchased by Campenon/SGE does not mean that the loss is directly related to Iraq's invasion and occupation of Kuwait. Indeed, the Panel finds that the loss is not a direct loss, for the following reasons.

150. Firstly, the Panel finds it significant that the demonetised notes were purchased through a lengthy chain of sales and purchases, including the involvement of several intermediaries, following the theft of the notes from Kuwait. Once Indosuez expressed its interest (on behalf of SGE) in purchasing the relevant Kuwaiti dinars, the dinars were sold and transported to a bank in Switzerland. Following the purchase and sale of the Kuwaiti dinars by a number of other entities, the final purchaser (i.e., SGE) was a French company.

151. Secondly, SGE's purchase of the notes appears to have occurred a significant period of time after the theft of the Kuwaiti dinars, and in particular, well after the financial community became aware generally of the large-scale theft of Kuwaiti dinars by the Iraqi forces.

152. Finally, SGE, a large multi-national company, acting on behalf of Campenon, willingly purchased the notes in Switzerland. The loss could only have occurred as a result of SGE's independent decision to purchase a large sum of Kuwaiti dinars at a time when there was a substantial general risk for any purchaser. This is reinforced by the restricted terms of the warranty given by each seller in the Purchase Agreements.

153. The Panel acknowledges that while the NBK's insistence on payment in Kuwaiti dinars at a time when the currency was in short supply placed SGE in a difficult position, the entire transaction was inherently risky. The Panel finds that SGE should have been aware of the risk in buying the notes at a time when it knew, on the basis of the First Resolution and as a result of its enquiries of relevant governmental and banking agencies, that there had been a widespread theft of Kuwaiti dinars from Kuwait. Moreover, the arrival of the notes in Switzerland was considerably removed in time, place and circumstances from the theft of the notes in Kuwait.

154. The Panel consequently finds that Campenon failed to establish that its losses were directly caused by Iraq's invasion and occupation of Kuwait.

155. The Panel records the fact that Campenon did not advise the Panel as to the purchase price paid by SGE for the demonetised notes. It has not been possible to establish the price from the limited evidence provided. It is therefore possible that the compensation received from Indosuez represents the entire amount of SGE's (and therefore Campenon's) loss.

### 3. Recommendation

156. The Panel recommends no compensation for financial losses.

## B. Interest

157. As the Panel recommends no compensation for financial losses, there is no need for the Panel to determine the date of loss from which interest would accrue.

## C. Claim preparation costs

158. Campenon seeks compensation for "reasonable attorney fees". In a letter dated 6 May 1998, the Panel was notified by the Executive Secretary of the Commission that the Governing Council intends to resolve the issue of claim preparation costs at a future date. Accordingly, the Panel takes no action with respect to the claim by Campenon for such costs.

## D. Recommendation for Campenon

Table 10. Recommended compensation for Campenon

| Claim element | Claim amount (USD) | Recommended compensation (USD) |
|---|---|---|
| Financial losses | 7,000,000 | nil |
| Interest | 1,762,478 | nil |
| Claim preparation costs (no amount specified) | (--) | nil |
| Total | 8,762,478 | nil |

159. Based on its findings regarding Campenon's claim, the Panel recommends no compensation.

## VIII. BRÜCKNER GRUNDBAU GMBH

160. Brückner Grundbau GmbH ("Brückner") is a corporation organised according to the laws of Germany operating in the construction industry.

161. In the "E" claim form, Brückner sought compensation in the amount of KWD 1,144,742 (USD 3,961,045) for contract losses and loss of tangible property. These loss elements do not correspond with the loss elements contained in a document attached to the "E" claim form, which sets out a valuation of Brückner's losses (the "valuation sheet"). The Panel notes that Brückner's claim suffers from substantial formal deficiencies, including an insufficiently detailed Statement of Claim and voluminous untranslated documents. These deficiencies made it difficult to assess the nature of the claim and the evidence provided in support of the claim.

162. Brückner has received compensation from Hermes Kreditversicherungs-AG, the German export credit insurance corporation, in the amount of 3,284,468 Deutsche Mark (DEM). However, it does not appear that Brückner has reduced its claim to reflect this compensation.

163. On the basis of the information provided, the Panel has reclassified elements of Brückner's claim for the purposes of this report. The Panel therefore considered the amount of KWD 1,144,742 (USD 3,961,045) for contract losses, loss of tangible property, payment or relief to others, financial losses, other losses and interest, as follows:

Table 11. Brückner's claim

| Claim element | Claim amount (USD) |
|---|---|
| Contract losses | 157,786 |
| Loss of tangible property | 2,127,705 |
| Payment or relief to others | 112,292 |
| Financial losses | 688,982 |
| Other losses | 280,301 |
| Interest | 593,979 |
| Total | 3,961,045 |

### A. Contract losses

#### 1. Facts and contentions

164. Brückner seeks compensation in the amount of KWD 45,600 (USD 157,786) for contract losses allegedly incurred in connection with remedial work relating to two contracts, RA/157 and RA/207, which were contracts for the construction of motorways in Kuwait. Brückner was engaged as a sub-

contractor to Hyundai Engineering and Construction Limited ("Hyundai"), a Korean contractor. Brückner states that it was carrying out works for Hyundai at the time of Iraq's invasion and occupation of Kuwait. It is not clear when Brückner performed the work for which it seeks compensation, although Brückner referred without explanation to a period between April and September 1992, prior to entering into a new sub-contract with Hyundai.

165. Brückner did not explain the nature of the remedial works. Further, Brückner did not demonstrate that it was required to perform the works or explain why it was not paid for such works.

166. Brückner originally classified the claim for contract losses in its valuation sheet as "remedial works", but the losses are more appropriately classified as contract losses.

### 2. Analysis and valuation

167. Brückner provided as evidence of its alleged losses a copy of a sub-contract with Hyundai dated 29 November 1992. The sub-contract relates to contract RA/410, a contract for the construction of a motorway in Kuwait. Brückner failed to explain the connection of this sub-contract to contracts RA/157 and RA/207, although minutes of meetings between representatives of Brückner and Hyundai in August 1992 provided by Brückner indicate that contract RA/410 replaced contracts RA/157 and RA/207. Brückner also provided copies of "statements of cost" from 2 August 1990 to 30 September 1992 and various invoices. All of the statements and invoices provided by Brückner are dated subsequent to 2 March 1991.

168. The Panel finds that Brückner did not demonstrate that its losses were the direct result of Iraq's invasion and occupation of Kuwait, by, for example, demonstrating that the failure of Hyundai to pay the amounts due and owing was attributable to Hyundai being rendered insolvent or liquidated as a direct result of Iraq's invasion and occupation of Kuwait, or that Hyundai was otherwise entitled to refuse to pay Brückner.

### 3. Recommendation

169. The Panel recommends no compensation for contract losses.

## B. Loss of tangible property

### 1. Facts and contentions

170. Brückner seeks compensation in the amount of KWD 614,907 (USD 2,127,705) for loss of tangible property. The claim is for the alleged loss of equipment, spare parts and materials.

171. Brückner alleges that its equipment, plant and materials in Kuwait were damaged, lost and destroyed. However, Brückner failed to provide any

detail with respect to the facts and circumstances surrounding the alleged losses.

172. Brückner originally classified the claim for tangible property losses in its valuation sheet as "values of main equipment/spares and materials being lost", but the losses are more appropriately classified as tangible property losses.

### 2. Analysis and valuation

173. Brückner provided as evidence of its alleged loss of equipment two schedules, which related to each of contracts RA/157 and RA/207 respectively. These documents were generated specifically for the claim submission. In relation to its alleged loss of spare parts and materials, Brückner calculated the value of the spare parts and materials by taking its inventory as at 31 December 1989 and adding the spare parts and materials shipped into or purchased in Kuwait to provide a total figure as of 2 August 1990. Brückner provided computer printouts dated 12 January 1990 in support of the inventory figures. However, the printouts are in German and no translation was submitted.

174. The Panel finds that Brückner failed to provide sufficient evidence which demonstrated its title to or right to use the assets. The Panel further finds that Brückner failed to explain how its alleged losses were the direct result of Iraq's invasion and occupation of Kuwait.

### 3. Recommendation

175. The Panel recommends no compensation for loss of tangible property.

## C. Payment or relief to others

### 1. Facts and contentions

176. Brückner seeks compensation in the amount of KWD 32,452 (USD 112,292) for payment or relief to others. The claim is for the alleged cost of repatriating staff who were held hostage and detained in Iraq for several months.

177. Brückner did not provide any other details regarding its alleged loss.

178. Brückner originally classified the claim for payment or relief to others in its valuation sheet as "salary costs during hostage period", but the losses are more appropriately classified as payment or relief to others.

### 2. Analysis and valuation

179. Brückner did not provide any translated evidence regarding its alleged loss.

180. The Panel finds that Brückner failed to provide sufficient information and evidence to substantiate its claim.

### 3. Recommendation

181. The Panel recommends no compensation for payment or relief to others.

## D. Financial losses

### 1. Facts and contentions

182. Brückner seeks compensation in the amount of KWD 199,116 (USD 688,982) for financial losses in connection with interest on the late payment of contractual amounts, interest on blocked funds, and bank charges for contractual bonds relating to contracts RA/157 and RA/207.

### 2. Analysis and valuation

#### (a) Interest on late payment and blocked funds

183. Brückner seeks compensation in the amount of KWD 195,134 for interest on monies owed to it by Hyundai and on funds blocked in bank accounts in Kuwait and offshore.

184. In support of its claim for interest on late payment, Brückner provided some evidence that it was owed contractual amounts by Hyundai as at August 1992. However, it provided no evidence of the dates of performance of the work to which the debts relate. It also failed to explain or substantiate the 12 per cent rate of interest that it used to calculate the claim.

185. In relation to the claim for interest on the blocked funds in Kuwait, Brückner provided evidence of its account balance as of 31 July 1990. However, it failed to explain when the funds were released and it did not substantiate the 12 per cent interest rate that the calculation is based upon. Brückner did not explain why it did not receive interest subsequent to the liberation of Kuwait.

186. In relation to the claim for interest on blocked funds held offshore, Brückner provided evidence of a deposit made on 31 July 1990 and some untranslated evidence which shows the subsequent release of these funds. However, Brückner did not provide evidence to substantiate the 12 per cent rate of interest used to calculate its claim.

#### (b) Bonds and guarantees

187. Brückner seeks compensation in the amount of KWD 3,982 in relation to charges arising out of performance bonds and advance payment guarantees for contracts RA/157 (KWD 1,537) and RA/207 (KWD 2,445).

188. An internally produced document indicates that the performance bond relating to contract RA/157 was valid for the period 2 August 1990 to 25 February 1992. The outstanding charges in relation to this performance bond are KWD 1,211. The outstanding charges for the advance payment guarantee for the same contract and for the same period are KWD 326.

189. The same document indicates that the performance bond relating to contract RA/207 was valid for the period 2 August 1990 to 24 January 1992. The outstanding charges in relation to this performance bond are KWD 1,573. The outstanding charges for the advance payment guarantee for the same contract for the period 2 August 1990 to 25 February 1992 are KWD 872.

190. Brückner did not provide translated evidence regarding its alleged losses, such as evidence of payment of the charges.

191. The Panel finds that Brückner did not submit sufficient evidence to support its claim for financial losses. In any event, the alleged losses relating to contracts RA/157 and RA/207 are not compensable because the Panel has determined in paragraph 168, supra, that Brückner failed to establish that the underlying contract losses which gave rise to the financial losses alleged were the direct result of Iraq's invasion and occupation of Kuwait.

### 3. Recommendation

192. Based on its findings in paragraph 191, supra, the Panel recommends no compensation for financial losses.

## E. Other losses

### 1. Facts and contentions

193. Brückner seeks compensation in the amount of KWD 81,007 (USD 280,301) for other losses, including "miscellaneous sundry costs", allegedly incurred in relation to the RA/157 and RA/207 contracts. Brückner seeks compensation for costs incurred during the period 2 August 1990 to 30 September 1991.

### 2. Analysis and valuation

194. Brückner provided as evidence of its alleged losses a statement of costs incurred from August 1990 to September 1992 for each contract. Apart from the initial period, the costs are split between wages, salaries, building materials, plant and equipment, sub-contractor costs and additional overhead costs. Brückner also provided detailed backing schedules and copy information which can be partially linked to the statements of costs. Not all of the amounts claimed are clear, as the detailed information has not been cross-referenced to the statements of costs. In addition, some invoices are poor photocopies and are therefore illegible. Further, many documents have not been translated into English.

195. The Panel recommends no compensation for other losses as Brückner failed to provide sufficient evidence of the alleged losses.

### 3. Recommendation

196. The Panel recommends no compensation for other losses.

## F. Interest

197. As the Panel recommends no compensation, there is no need for the Panel to determine the date of loss from which interest would accrue.

## G. Recommendation for Brückner

Table 12. Recommended compensation for Brückner

| Claim element | Claim amount (USD) | Recommended compensation (USD) |
|---|---|---|
| Contract losses | 157,786 | nil |
| Loss of tangible property | 2,127,705 | nil |
| Payment or relief to others | 112,292 | nil |
| Financial losses | 688,982 | nil |
| Other losses | 280,301 | nil |
| Interest | 593,979 | nil |
| Total | 3,961,045 | nil |

198. Based on its findings regarding Brückner's claim, the Panel recommends no compensation.

## IX. TECHNIKA HUNGARIAN FOREIGN TRADING COMPANY

199. Technika Hungarian Foreign Trading Company ("Technika") is a state-owned corporation organised according to the laws of Hungary. Technika operates in the construction industry. It is claiming compensation on behalf of itself and a wholly owned subsidiary, the Uniform Joint Stock Company.

200. In the "E" claim form, Technika sought compensation in the amount of KWD 119,831 (USD 414,640) for contract losses and loss of tangible property.

201. In its reply to the article 15 notification, Technika appeared to amend the amounts claimed to KWD 86,625 and USD 119,047. Neither the purpose nor the scope of the amendment were clear from the translation provided by Technika. The Panel has only considered those losses contained in the original claim except where such losses have been withdrawn or reduced by Technika. Where Technika reduced the amount of losses in its reply to the article 15 notification, the Panel has considered the reduced amount.

202. The Panel has reclassified elements of Technika's claim for the purposes of this report. The Panel therefore considered the amount of KWD 119,831 (USD 414,640) for contract losses, loss of profits and loss of tangible property, as follows:

Table 13. Technika's claim

| Claim element | Claim amount (USD) |
|---|---:|
| Contract losses | 80,623 |
| Loss of profits | 41,263 |
| Loss of tangible property | 292,754 |
| Total | 414,640 |

### A. Contract losses

#### 1. Facts and contentions

203. Technika seeks compensation in the amount of KWD 23,300 (USD 80,623) for contract losses allegedly incurred in connection with a contract dated 30 March 1988 with Messrs. Adeeb Fahad S. Al-Tukhaim General Trading and Contracting Establishment of Kuwait ("Fahad"). The contract provided for the drilling of 72 water wells at Warfa, Kuwait.

204. The value of the contract was KWD 165,600. Technika alleges that as of the date of Iraq's invasion and occupation of Kuwait, it had completed the drilling of 26 wells with a value of KWD 35,180. It appears from the

limited information provided by Technika that Fahad made a partial payment to Technika in the amount of KWD 11,880 for the work that it had performed. Technika seeks the outstanding amount of KWD 23,300.

205. In its original claim submission, Technika sought compensation in the amount of KWD 35,225 for contract losses. However, a review of the claim revealed that the amount of KWD 11,925 should be classified as loss of profits. The balance of KWD 23,300 is dealt with under this section.

### 2. Analysis and valuation

206. The contract states that the works were to be completed within one year of the date of the commencement of work. The work was to commence on 28 June 1988. Therefore, the work under the contract was to be completed by 28 June 1989.

207. Technika provided 12 invoices, all dated 11 January 1990, which it asserts were unpaid. All of the invoices indicate that the work had been carried out in 1989. Technika provided no evidence that the contract period had been extended beyond 28 June 1989.

208. The amounts allegedly owing were long outstanding as at 2 August 1990. Technika provided no explanation for the delay in payment. The Panel, therefore, finds that Technika failed to demonstrate that the failure of Fahad to pay the amounts due and owing was a direct result of Iraq's invasion and occupation of Kuwait.

209. The Panel finds that Technika did not demonstrate that its alleged losses were the direct result of Iraq's invasion and occupation of Kuwait.

### 3. Recommendation

210. The Panel recommends no compensation for contract losses.

## B. Loss of profits

### 1. Facts and contentions

211. Technika seeks compensation in the amount of KWD 11,925 (USD 41,263) for loss of profits. Technika's claim is for "losses sustained resulting from the misscarrying (sic) of the contract". This represents the profit which Technika had to forego when it had to cease "the deliveries for the contract". While it is not clear which contract or which deliveries Technika is referring to, the Panel assumes that the contract referred to is the well drilling contract. Technika's claim is based on an 8.5 per cent rate of profitability.

212. Technika originally classified the claim for loss of profits as "contract losses", but the losses are more appropriately classified as loss of profits.

### 2. Analysis and valuation

213. The requirements to substantiate a loss of profits claim have been stated by the Panel in paragraphs 16 and 17, supra.

214. Technika was asked in the article 34 notification to provide evidence in support of its claim for loss of profits. Technika did not reply to the article 34 notification.

215. The Panel recommends no compensation as Technika failed to provide any evidence to substantiate its loss of profits claim.

### 3. Recommendation

216. The Panel recommends no compensation for loss of profits.

## C. Loss of tangible property

### 1. Facts and contentions

217. Technika seeks compensation in the amount of KWD 84,606 (USD 292,754) for loss of tangible property. The claim is for the alleged loss of drilling equipment, furniture and a car in Kuwait at the time of Iraq's invasion and occupation of Kuwait. Technika also seeks compensation for the transportation costs of the furniture to Kuwait.

218. Technika alleges that as a result of Iraq's invasion and occupation of Kuwait, its drilling equipment, which was in Kuwait for use on the well drilling contract, was destroyed. Technika states that the equipment was valued at KWD 50,000.

219. In relation to the furniture and transportation costs, Technika alleges that it entered into a contract with Fahad for the marketing of "various furniture". Under the terms of the contract, Technika retained title to the furniture until it was sold. Technika alleges that the goods were shipped from the Yugoslavian port of Koper to Kuwait on 16 May 1990. The furniture was received and stored. However, Technika alleges that as a result of Iraq's invasion and occupation of Kuwait, the furniture was later destroyed. Technika seeks compensation in the amount of KWD 22,554 for the loss resulting from the destruction of the furniture. In addition, Technika seeks compensation in the amount of KWD 10,652 (expressed in the invoices as 2,495,436 forint (HUG)), which represents the cost of transporting the furniture to Kuwait.

220. Technika seeks compensation in the amount of KWD 1,400 for the loss of a car. Technika alleges that the car disappeared during Iraq's invasion and occupation of Kuwait.

## 2. Analysis and valuation

### (a) Drilling equipment

221. As evidence of its title to the drilling equipment, Technika provided a copy of a certificate of insurance dated 15 April 1988, relating to the shipment of the drilling equipment and accessories. The amount insured was KWD 50,000. Technika also provided a copy of the drilling contract. Further, it provided the original invoices for the equipment dated 28 June 1988. The total value of the invoices was KWD 50,000.

222. As evidence of the presence of the drilling equipment in Kuwait at the time of Iraq's invasion and occupation of Kuwait, Technika provided a letter from its Kuwaiti partner (which appears to have been Fahad, trading under a different name) to the Hungarian Embassy in Kuwait dated 6 May 1993. The letter states that Technika's furniture, drilling equipment and tools were found to be missing upon the resumption of activities after the liberation of Kuwait.

223. The Panel finds that Technika provided sufficient evidence of its title to or right to use, and the presence in Kuwait of, the drilling equipment. The Panel also finds that the letter dated 6 May 1993 is sufficient evidence that the drilling equipment was lost as a result of Iraq's invasion and occupation of Kuwait.

224. In relation to the value of the drilling equipment, the certificate of insurance referred to in paragraph 221, supra, has expired. It therefore provides no realistic guideline as to the value of the drilling equipment, because the equipment would be expected to depreciate significantly during the course of the project. The contract appears to contemplate the return of the drilling equipment to Hungary after the conclusion of the drilling, which suggests it may have had some value at that time. The Panel requested its expert consultants to perform a valuation of the loss. The Panel's expert consultants applied depreciation rates appropriate for drilling equipment and concluded that the equipment had a value of KWD 26,750 (USD 92,561) as at 2 August 1990. The Panel accepts this valuation.

225. The Panel recommends compensation in the amount of KWD 26,750 (USD 92,561) for the drilling equipment.

### (b) Furniture and transportation costs

226. Technika provided as evidence of its title to the furniture a copy of a letter which references a letter of guarantee in the amount of USD 100,000, established to cover the consignment contract for the furniture. The guarantee expired on 31 December 1990. Technika also provided: a bill of lading dated 16 May 1990 relating to the shipment of the furniture to Kuwait; three invoices and a debit memorandum relating to

the furniture, all of which are dated 6 May 1990; and a series of shipment invoices dated 2 April 1990 from Technika to Fahad.

227. As evidence of the presence of the furniture in Kuwait at the time of Iraq's invasion and occupation of Kuwait, Technika provided the letter from its Kuwaiti partner referred to in paragraph 222, supra.

228. The Panel finds that Technika provided sufficient evidence of its title to or right to use, and the presence in Kuwait of, the furniture. The Panel also finds that the letter dated 6 May 1993 is sufficient evidence that the furniture was lost as a result of Iraq's invasion and occupation of Kuwait.

229. In the absence of any evidence that Fahad sold any items of furniture, the Panel is satisfied that Technika retained title to the furniture and that the furniture had the claimed value.

230. Technika provided satisfactory evidence of the amount of the transportation costs in the form of transport invoices for the furniture. The costs consist of international ocean freight charges, and domestic transport charges after the furniture reached Kuwait. The Panel considers that Technika would have taken these costs into account in setting prices for the furniture for sale in the Kuwaiti market. As such, the Panel is satisfied that these costs represent a loss suffered as a direct result of Iraq's invasion and occupation of Kuwait.

231. The Panel recommends compensation in the amount of KWD 22,554 (USD 78,042) for the furniture and KWD 10,652 (USD 36,858) for the furniture transportation costs.

### (c) Car

232. Technika provided a certificate dated 22 May 1993 from Al-Imad Real Estate K.S.C.C., the company from which Technika rented a villa in Kuwait. The certificate states, "white Buick car with-out plate No.s owned by the tenant was lost from the parking place of the bldg.". Technika did not provide any other evidence in relation to the car. Technika provided no evidence dated prior to 2 August 1990 that it owned the car.

233. The Panel finds that Technika failed to provide sufficient evidence which demonstrated its title to or right to use, and the value and the presence in Kuwait of, the car.

234. The Panel recommends no compensation for the car.

## 3. Recommendation

235. The Panel recommends compensation in the amount of USD 207,461 for loss of tangible property.

## D. Recommendation for Technika

Table 14. Recommended compensation for Technika

| Claim element | Claim amount (USD) | Recommended compensation (USD) |
|---|---|---|
| Contract losses | 80,623 | nil |
| Loss of profits | 41,263 | nil |
| Loss of tangible property | 292,754 | 207,461 |
| Total | 414,640 | 207,461 |

236. Based on its findings regarding Technika's claim, the Panel recommends compensation in the amount of USD 207,461. The Panel finds the date of loss to be 2 August 1990.

## X. TRANSINVEST ENGINEERING AND CONTRACTING LIMITED

237. Transinvest Engineering and Contracting Limited ("Transinvest") is a corporation organised according to the laws of Hungary operating in the construction industry.

238. In the "E" claim form, Transinvest sought compensation in the amount of KWD 117,669 (USD 407,159) for contract losses, real property losses, tangible property losses and other losses (cost of evacuation).

239. The Panel has reclassified elements of Transinvest's claim for the purposes of this report. The Panel therefore considered the amount of KWD 117,669 (USD 407,159) for loss of profits, loss of tangible property and payment or relief to others, as follows:

Table 15. Transinvest's claim

| Claim element | Claim amount (USD) |
|---|---|
| Loss of profits | 181,661 |
| Loss of tangible property | 219,128 |
| Payment or relief to others | 6,370 |
| Total | 407,159 |

### A. Loss of profits

#### 1. Facts and contentions

240. Transinvest seeks compensation in the amount of KWD 52,500 (USD 181,661) for loss of profits. The claim relates to contracts under which it was performing work, or under which it was about to commence work, or which it was in the process of negotiating, at the time of Iraq's invasion and occupation of Kuwait. Transinvest alleges that it made preparations for, and purchased necessary machines and materials in relation to, these contracts. Transinvest estimated its loss upon termination of the contracts to be KWD 52,500. This figure is based on a 15 per cent profit margin for the total value of the contracts of KWD 350,000.

241. Transinvest originally classified the claim for the costs arising out of the termination of the contracts as "contract losses", but the losses are more appropriately classified as loss of profits.

#### 2. Analysis and valuation

242. The requirements to substantiate a loss of profits claim have been stated by the Panel in paragraphs 16 and 17, supra.

243. Transinvest provided no evidence to support its claims in relation to loss of profits. Transinvest was requested in the article 34 notification to submit evidence such as the contracts, audited financial statements, budgets, management accounts or turnover prepared by or on behalf of Transinvest. It failed to do so. The Panel finds that Transinvest provided insufficient evidence to substantiate its alleged loss.

### 3. Recommendation

244. The Panel recommends no compensation for loss of profits.

## B. Loss of tangible property

### 1. Facts and contentions

245. Transinvest seeks compensation in the amount of KWD 63,328 (USD 219,128) for loss of tangible property. The claim is for the alleged loss of machinery and equipment and other tangible property delivered to the Fahahil Expressway project site in Kuwait.

246. Transinvest originally classified an alleged loss in the amount of KWD 60,364 as "real property losses", but the losses are more appropriately classified as tangible property losses. The Panel has therefore considered these losses, together with the balance of KWD 2,964, which was classified in Transinvest's original claim submission as loss of tangible property, as tangible property losses.

247. Transinvest alleges that its property was destroyed during Iraq's invasion and occupation of Kuwait. Transinvest provided no other information or evidence regarding the alleged circumstances of the loss or destruction of the tangible property.

### 2. Analysis and valuation

248. The Panel finds that Transinvest did not submit any evidence which demonstrated its title to or right to use the assets, and the value and the presence of the tangible property in Kuwait. The Panel finds that Transinvest failed to submit sufficient evidence to substantiate its loss of tangible property claim.

### 3. Recommendation

249. The Panel recommends no compensation for loss of tangible property.

## C. Payment or relief to others

### 1. Facts and contentions

250. Transinvest seeks compensation in the amount of KWD 1,841 (USD 6,370) for payment or relief to others. The claim is for the alleged costs of evacuating its staff and their families from Kuwait to Hungary during

Iraq's invasion and occupation of Kuwait. The evacuation took place with the help of the Hungarian Ministry of Foreign Affairs.

251. Transinvest provided no other information regarding its claim for payment or relief to others.

### 2. Analysis and valuation

252. Transinvest provided as evidence of its alleged losses a letter/invoice from the Hungarian Ministry of Foreign Affairs asking Transinvest to transfer to the bank account of the Ministry of Foreign Affairs the amount of HUG 492,621, for the cost of air tickets of the Hungarian expatriates evacuated from Kuwait in 1990. Transinvest did not provide any proof that it in fact paid the amounts claimed. The Panel finds that Transinvest provided insufficient information and evidence to substantiate its alleged loss.

### 3. Recommendation

253. The Panel recommends no compensation for payment or relief to others.

## D. Recommendation for Transinvest

Table 16. Recommended compensation for Transinvest

| Claim element | Claim amount (USD) | Recommended compensation (USD) |
|---|---|---|
| Loss of profits | 181,661 | nil |
| Loss of tangible property | 219,128 | nil |
| Payment or relief to others | 6,370 | nil |
| Total | 407,159 | nil |

254. Based on its findings regarding Transinvest's claim, the Panel recommends no compensation.

## XI. ASSOCIATED CONSULTING ENGINEERS S.A.L.

255. Associated Consulting Engineers S.A.L. ("ACE") is a corporation organised according to the laws of Lebanon. ACE seeks compensation in relation to losses which its Kuwait branch allegedly suffered as a result of Iraq's invasion and occupation of Kuwait. ACE's Kuwait branch is involved in engineering design and the supervision of a wide variety of civil, architectural and town planning projects in Kuwait.

256. In the "E" claim form, ACE sought compensation in the amount of KWD 497,416 (USD 1,721,162) for contract losses, loss of tangible property, payment or relief to others and other losses. It also sought interest in the accompanying Statement of Claim.

257. The Panel has reclassified elements of ACE's claim for the purposes of this report. The Panel therefore considered the amount of KWD 497,416 (USD 1,721,162) for contract losses, loss of tangible property, loss of intangible property, payment or relief to others, other losses, interest and claim preparation costs, as follows:

Table 17. ACE's claim

| Claim element | Claim amount (USD) |
|---|---:|
| Contract losses | 752,509 |
| Loss of tangible property | 55,163 |
| Loss of intangible property | 86,505 |
| Payment or relief to others | 24,221 |
| Other losses | 797,574 |
| Interest (no amount specified) | (--) |
| Claim preparation costs | 5,190 |
| Total | 1,721,162 |

### A. Contract losses

#### 1. Facts and contentions

258. ACE seeks compensation in the amount of KWD 217,475 (USD 752,509) for contract losses allegedly incurred in connection with three construction contracts. The first contract was with the Ministry of Public Works of Kuwait (the "Ministry"), for the supervision of part of a project for the cleaning and renovation of a sewerage system (the "CCTV Project"). The second contract was also with the Ministry and was for the assessment and upgrading of a sewage treatment plant (the "Ardiyah Project"). The third contract was with the Roads and Bridges Public Corporation of the

Government of the Republic of Sudan (the "Roads Corporation"), for the design of roads in Sudan (the "Roads Project").

259. ACE alleges that its work on the CCTV Project was disrupted by Iraq's invasion and occupation of Kuwait. ACE's work on the Ardiyah Project appears to have been completed shortly before 2 August 1990. ACE's work on the Roads Project was completed in 1989.

(a) The CCTV Project

260. The CCTV Project was a substantial sewerage system cleaning and renovation project carried out in Kuwait City over a number of years starting in 1987. A number of design consultants (engineers) and contractors were involved in the various phases and geographical sectors of the project works.

261. Under a contract dated 25 July 1987, the Ministry appointed ACE, along with a joint venture partner, Pan Arab Consulting Engineers ("PACE"), and a company incorporated in the United States of America called CH2M Hill, as consultants to supervise certain aspects and phases of the CCTV Project. ACE makes no claim before the Commission on behalf of PACE or CH2M Hill.

262. ACE carried out survey and design works between 1987 and 1989 under the contract and was paid for those works. ACE asserts that a part of the CCTV Project called "Phase II Part A" was due to start in August 1990. ACE was required to supervise the work of a contractor which would be carrying out improvements to the sewerage system. ACE states that in May 1990, it designed tender documents on behalf of the Ministry for contractors to bid for the construction work. ACE asserts that the Ministry did not pay ACE for this work. ACE also asserts that it had already employed and paid staff for the month of August 1990 in preparation for the commencement of Phase II Part A.

263. ACE alleges that the contract works did not commence in August 1990 due to Iraq's invasion and occupation of Kuwait. Phase II Part A of the CCTV Project eventually commenced in June 1992.

264. ACE seeks compensation in the amount of KWD 16,175 for the "mobilisation cost" of Phase II Part A of the CCTV Project, being the salaries which it paid its employees in August 1990 and the tender evaluation costs it incurred in May 1990.

(b) The Ardiyah Project

265. Under a contract with the Ministry dated 19 July 1986, ACE agreed to evaluate the status of the plant and to prepare tender documents for contractors seeking to carry out the contract work to upgrade the plant. The contract provided that the Ministry was to pay ACE the amount of KWD 282,439 on a staged basis. The original contract period was 28 months.

266. ACE asserts that it carried out substantial extra design works under the contract because, as the project developed, it became clear that the Ministry wanted a new plant rather than an upgraded plant. ACE asserts that it was entitled to payment of an additional amount of KWD 195,000 for these extra design works. ACE first invoiced the Ministry for the extra works in May 1989. ACE asserts that while payment for the extra works was not specifically covered by the contract, the contract permitted the parties to agree to carry out further works. ACE appears to have invoiced the Ministry for the extra works according to a contractual formula for extra time incurred and materials consumed.

267. Although the Ministry disputed ACE's claim, ACE asserts that the Ministry was due to pay ACE the amount of KWD 195,000 for the extra works in August 1990. The payment was not made before Iraq's invasion and occupation of Kuwait. ACE alleges that the parties ultimately settled their differences under an Agreement of Conciliation and Amicable Settlement (the "Conciliation Agreement") dated 6 February 1995. Under the Conciliation Agreement, the Ministry agreed to pay ACE (and indeed subsequently paid ACE) the amount of KWD 29,700.

268. ACE alleges that the parties settled their dispute pursuant to the Conciliation Agreement for a number of reasons, including difficulties resulting from Iraq's invasion and occupation of Kuwait, particularly the loss of documents and the change in personnel at the Ministry, the fact that the Ministry's policy subsequent to the liberation was not to pay for work performed under variations to contracts, and the financial difficulties which Kuwait experienced post-liberation.

269. ACE seeks compensation in the amount of KWD 165,300 for the balance of unpaid invoices stated to be payable under the contract with the Ministry (KWD 195,000), less the amount which the Ministry paid ACE pursuant to the Conciliation Agreement (KWD 29,700).

### (c) The Roads Project

270. Under ACE's contract with the Roads Corporation dated 27 January 1988, ACE agreed to design three feeder roads in Sudan. Additional contract work was implemented pursuant to an addendum dated 11 December 1988. The project was financed by the Kuwait Fund for Arab Economic Development (the "Fund"). Although the Fund financially supported the Roads Project, the Roads Corporation was contractually responsible to ACE for payment for ACE's work.

271. ACE received payments for work done in 1988. It asserts that payment of subsequent work which it invoiced in 1989 was delayed because the Fund temporarily suspended its financial support pending negotiations between the Fund and Sudan. However, ACE also asserts that the suspension was not subsequently lifted in any event due to Sudan's support for Iraq during Iraq's invasion and occupation of Kuwait. ACE asserts that as a result of

Iraq's invasion and occupation of Kuwait, the Fund ceased its activities in Sudan and ACE was unable to collect the unpaid monies.

272. ACE seeks compensation in the amount of KWD 36,000 for unpaid invoices for work carried out on the Roads Project in 1989.

### 2. Analysis and valuation

#### (a) The CCTV Project

273. Under its contract with the Ministry, ACE was entitled to be compensated by the Ministry for the amounts which it currently seeks before the Commission. It is unclear whether ACE invoiced the Ministry for either the employees' salaries or the tender evaluation costs. ACE provided a letter to the Ministry dated 4 September 1991 requesting payment of KWD 11,351 for tender evaluation reports. The amount was allegedly never paid. Because the majority of the documentation attached to the letter is in Arabic and has not been translated, the Panel was unable to conclude that the letter relates to the May 1990 work.

274. ACE provided substantial documentation in relation to the resumed CCTV Project in 1992, even though it makes no claim in relation to the resumed work. ACE also provided substantial documentation relating to the CCTV Project as a whole. However, none of the invoices or payment certificates provided indicate which employees were employed on Phase II Part A, what they were paid and what their tasks were intended to be.

275. Further, ACE failed to provide any evidence that Phase II Part A was about to commence in August 1990, such as evidence that it paid its employees for the costs which it claims, that a tender evaluation had taken place in May 1990, or that demand had been made of the Ministry for payment of the tender evaluation costs. In respect of the demand, the Panel has referred in paragraph 273, supra, to a letter dated 4 September 1991 to the Ministry which referred to payment for tender evaluation reports. However, the letter itself contains no detail linking the demand to ACE's work in May 1990 on Phase II Part A, and ACE did not provide a translation of the attachments.

276. In the absence of such evidence, the Panel finds that ACE failed to submit sufficient evidence to substantiate its claim and in particular to demonstrate that its loss was directly caused by Iraq's invasion and occupation of Kuwait.

277. The Panel recommends no compensation for the alleged employees' salaries and tender evaluation costs, as ACE did not provide sufficient evidence to support its claims for such alleged costs.

### (b) The Ardiyah Project

278. The terms of the Conciliation Agreement are relevant to the Panel's consideration of ACE's claim. Article 2 provides that the Conciliation Agreement represents a "complete amicable settlement between the two parties for the dispute between them". Moreover, in consideration of the Ministry's payment of the sum of KWD 29,700, ACE agreed to waive "all past or present claims before any arbitration or judicial body and before the courts or any other body concerning the claims...".

279. The Panel finds that the terms of the Conciliation Agreement clearly demonstrate that ACE and the Ministry entered into a settlement agreement, which resolved a dispute that arose well before Iraq's invasion and occupation of Kuwait. The Panel further finds that ACE failed to demonstrate that its claimed losses were not covered by the terms of the Conciliation Agreement.

### (c) The Roads Project

280. ACE provided a copy of part of its contract with the Roads Corporation but did not provide a full copy of the terms of payment. The Panel notes that there is no reference in the contract to the Fund being responsible for payment to ACE on behalf of the Roads Corporation, or any similar mechanism such as a guarantee. ACE provided no evidence establishing a direct payment demand against the Fund.

281. The documents provided by ACE indicate that the three invoices had been outstanding from dates in 1989 and that payment was required within 45 days of the date of the invoice. ACE provided no evidence to support its assertion that the failure of the Roads Corporation to pay the invoices was related to Iraq's invasion and occupation of Kuwait. Indeed, ACE claims that the initial reason for its inability to obtain payment was the Fund's interruption of funding pending negotiations with Sudan. The original cause of the non-payment of the 1989 invoices was due to negotiations between Kuwait and Sudan, not Iraq's invasion and occupation of Kuwait.

282. The failure of the Roads Corporation to pay the outstanding invoices was due to the interruption of the Fund's funding in 1989. The Panel finds that ACE did not demonstrate that its alleged losses were directly caused by Iraq's invasion and occupation of Kuwait.

## 3. Recommendation

283. The Panel recommends no compensation for contract losses.

### B. Loss of tangible property

#### 1. Facts and contentions

284. ACE seeks compensation in the amount of KWD 15,942 (USD 55,163) for loss of tangible property. The claim is for the alleged loss of furniture and office equipment from its Kuwait office.

285. ACE states that, on or about 4 August 1990, ACE's staff left the office and work sites. Most left the country. The items of tangible property were stolen or damaged some time after 4 August 1990, during Iraq's invasion and occupation of Kuwait. ACE states that it has not retrieved any of the property or its value. ACE seeks compensation for the net book value of its property as at 1 August 1990.

#### 2. Analysis and valuation

286. ACE provided as evidence of its alleged losses a witness statement made by its executive secretary (the "witness statement"). The witness statement describes the general existence of the furniture and office equipment and states that ACE was the owner of the items. Attached are photographs which she took of the office and of the damaged furniture and office equipment during Iraq's occupation of Kuwait.

287. ACE also provided an audited balance sheet prepared after the liberation of Kuwait (it is dated 17 June 1992) reflecting the position as at 1 August 1990. The balance sheet includes an item for furniture and office equipment as part of ACE's fixed assets with a value of KWD 15,942. ACE also provided a detailed schedule of the value of the items of furniture and office equipment as at 31 December 1989. ACE states that this schedule formed the basis of the figures in the audited balance sheets. The schedule records each item of property, its purchase date, the original value, the cumulative depreciation value and the resulting book value.

288. ACE provided no documentary evidence apart from that described above that it owned the items. It was asked to provide documentary evidence in the article 34 notification. In its reply, ACE stated that no evidence of the ownership of the property was available as most records were destroyed during Iraq's invasion and occupation of Kuwait.

289. ACE's executive secretary explained in her witness statement that she discovered that the offices had been looted. The photographs taken by her confirm this. The Panel considers the witness statement and the photographs to be evidence of the fact of loss and the cause thereof.

290. The Panel normally requires a claimant to supply clear documentary evidence of title to or right to use tangible property, such as invoices and customs declarations. ACE states that it is unable to provide such evidence because its offices were looted. The Panel considers that there

is sufficient evidence to establish that the majority of ACE's records relating to its purchases and maintenance of the tangible property were kept in its Kuwait office and were not duplicated in ACE's offices in other countries. Nor could ACE have been expected to duplicate such records in other countries, because ACE's Kuwait office, although receiving support and direction from offices in other countries, essentially operated independently. Taking into account the clear evidence of looting, and on the basis that there is some documentary evidence of title, presence in Kuwait and value in the form of the audited balance sheet and the schedule, the Panel finds that ACE provided sufficient evidence of ACE's title to or right to use, and the presence in Kuwait of, the tangible property.

291. The Panel requested its expert consultants to perform a valuation of the losses. The Panel's expert consultants concluded that there is sufficient evidence of some value for the lost furniture and office equipment based on the audited balance sheet, but that the value is less than that attributed to this loss element by ACE because of the limited information available. The experts consider that there is sufficient evidence for a valuation of the tangible property in the amount of KWD 8,846. The Panel accepts the expert consultants' valuation and recommends compensation in the amount of KWD 8,846 (USD 30,608).

### 3. Recommendation

292. The Panel recommends compensation in the amount of USD 30,608 for loss of tangible property.

## C. Loss of intangible property

### 1. Facts and contentions

293. ACE seeks compensation in the amount of KWD 25,000 (USD 86,505) for the replacement cost of computer software and drawings alleged to have been destroyed or damaged during Iraq's invasion and occupation of Kuwait. ACE alleges that the replacement cost of the software is KWD 10,000 and of the drawings is KWD 15,000. These items were stated to have been in ACE's Kuwait office at the time of Iraq's invasion and occupation of Kuwait.

294. ACE describes the circumstances of the loss in the same terms as its loss of tangible property. However, the Panel is satisfied that ACE seeks compensation for the economic value of the information contained in the software and drawings, not of the physical materials themselves.

295. ACE originally classified the claim for the loss or destruction of the software and drawings as "loss of tangible property", but the losses are more appropriately classified as intangible property losses.

296. ACE provided no information as to the reason for the selection of the replacement cost valuation methodology for these items.

### 2. Analysis and valuation

297. ACE provided as evidence of its alleged losses the witness statement of the executive secretary referred to in paragraph 286, supra. As with its claim for loss of tangible property, ACE states that it was unable to provide any documentary evidence relating to its claim for loss of intangible property.

298. In order to establish a claim for loss of intangible property, a claimant must provide evidence of a similar nature as is required to substantiate a claim for loss of tangible property. A claimant must therefore provide sufficient evidence of its title to or right to use, and the value and presence in Kuwait of, the intangible property. There will sometimes be differences in the nature of information and evidence needed to substantiate claims for loss of intangible property as opposed to claims for tangible property, particularly in relation to valuation.

299. Taking into account the executive secretary's account of the looting of the intangible property, and the unavoidable difficulties experienced by ACE in providing documentary evidence of its alleged losses, the Panel finds that ACE provided sufficient evidence of its title to or right to use, and the presence in Kuwait of, the computer software and drawings.

300. The Panel finds, however, that there is insufficient information about, or evidence of the value of, the software or the drawings, to attempt a valuation of these items. ACE failed to provide information or evidence about such matters as the date of purchase of the software; the use to which the software and drawings were put; whether it is possible to recreate the lost information from memory; and the time necessary to create or recreate the information.

### 3. Recommendation

301. The Panel recommends no compensation for loss of intangible property.

## D. Payment or relief to others

### 1. Facts and contentions

302. ACE seeks compensation in the amount of KWD 7,000 (USD 24,221) for payment or relief to others. The claim is for travel expense advances paid in cash to four directors in order to allow them to leave Kuwait on or around 4 August 1990, for Lebanon, Greece and Jordan, respectively. Three of the directors were visiting Kuwait at the time of Iraq's invasion and occupation of Kuwait. The fourth director was the branch office manager who lived in Kuwait.

303. ACE provided no details of the actual travel routes taken by, or of the actual destinations of, each of the four directors.

### 2. Analysis and valuation

304. ACE provided as evidence of its alleged losses the witness statement of the executive secretary referred to in paragraph 286, supra, and an undated document which records the amounts paid to the four directors with their signatures acknowledging the payments. In its reply to the article 34 notification, ACE stated that the directors did not retain any receipts or other evidence of their costs.

305. The Panel finds that as the three non-resident directors were visiting the Kuwait branch office, ACE would ordinarily be expected to have paid for their travel costs from Kuwait to their home countries at some point in any event. ACE provided no evidence either of the purchase of tickets prior to 2 August 1990 which the directors were consequently unable to use after that date, or of the fact that all or part of their actual travel costs were higher than normal. ACE failed to submit any evidence that the advances were in excess of the ordinary travel expenses of the directors.

306. The fourth director, who was Lebanese, lived in Kuwait. Therefore, it could not ordinarily be expected that he would have had to leave Kuwait at any stage. However, ACE provided no information or evidence as to the mode of transport, his actual route or final destination. In the absence of such information and evidence, the Panel is unable to assess whether the costs claimed were temporary and extraordinary in nature.

307. The Panel considers that ACE failed to provide sufficient information concerning, and evidence of, the alleged costs to support its claim for payment or relief to others.

### 3. Recommendation

308. The Panel recommends no compensation for payment or relief to others.

## E. Other losses

### 1. Facts and contentions

309. ACE seeks compensation in the amount of KWD 230,499 (USD 797,574) for the costs of resuming its activities in Kuwait after the liberation of Kuwait (the "restart costs") and salaries paid to six directors (the "directors' costs").

#### (a) Restart costs

310. ACE seeks compensation in the amount of KWD 85,422 for the costs of resuming its activities in Kuwait between 1 May 1991 and 30 June 1992. ACE seeks compensation for, inter alia, cleaning the office and re-employing staff.

(b) Directors' costs

311. ACE seeks compensation in the amount of KWD 145,077 for the costs which it alleges it paid six directors between 1 August 1990 and 30 June 1992. ACE asserts that a certain percentage of these costs were normally payable by ACE's Kuwait branch, but because the branch was not in operation due to Iraq's invasion and occupation of Kuwait, ACE was unable to allocate the directors' costs to its Kuwait branch during this period.

312. In effect, the amounts claimed represent part of ACE's Kuwait branch overheads. The Panel has therefore treated the claim as being analogous to a claim for loss of profits.

## 2. Analysis and valuation

(a) Restart costs

313. A claimant seeking compensation for restart costs must provide proof of payment for the items claimed. It must further demonstrate that it incurred costs in excess of costs normally incurred by the claimant for this type of expense.

314. As evidence of its claim for restart costs, ACE provided the witness statement, a detailed list of expenses related to the restart costs between 1 May 1991 and 30 June 1992, and the supporting computer generated ledger books from 1991 and 1992.

315. In the article 34 notification, ACE was asked to provide invoices and proof of payment for the services listed. It failed to provide such evidence. ACE provided bank statements for 1991, but these have insufficient detail to match with the alleged disposition of funds for the items comprising the restart costs. ACE therefore failed to establish proof of payment of any of the costs claimed.

(b) Directors' costs

316. The Panel has stated in paragraph 312, supra, that this claim is analogous to a claim for loss of profits. The nature of ACE's assertions indicates that the directors' costs form part of ACE's Kuwait branch's overheads and would normally have been paid out of the branch's earnings.

317. The requirements to substantiate a loss of profits claim have been stated by the Panel in paragraphs 16 and 17, supra.

318. As evidence of its claim for directors' costs, ACE provided audited financial statements prepared on behalf of ACE for the years 1987, 1988 and 1989. It also provided consolidated group accounts for the Associated Consulting Engineers Group for the years 1989-1990. The ledger books referred to in paragraph 314, supra, contain some references to payments to directors. However, ACE did not provide audited financial statements for

its Kuwait branch or for the consolidated group after 1990. Nor did it provide budgets, management accounts, or evidence of expected turnover.

319. Further, ACE failed to provide copies of the contracts with the directors giving rise to their alleged entitlement to the payments made by ACE, evidence that these costs were historically allocated to the Kuwait branch or evidence of payment of these costs.

320. The Panel finds that ACE failed to provide sufficient explanations and evidence to substantiate its claims for the restart costs and the directors' costs.

### 3. Recommendation

321. The Panel recommends no compensation for other losses.

## F. Interest

322. With reference to the issue of interest, the Panel refers to paragraphs 19 and 20, *supra*, of this report.

## G. Claim preparation costs

323. ACE seeks compensation in the amount of KWD 1,500 (USD 5,190) for asserted claim preparation costs. In a letter dated 6 May 1998, the Panel was notified by the Executive Secretary of the Commission that the Governing Council intends to resolve the issue of claim preparation costs at a future date. Accordingly, the Panel takes no action with respect to the claim by ACE for such costs.

## H. Recommendation for ACE

Table 18. Recommended compensation for ACE

| Claim element | Claim amount (USD) | Recommended compensation (USD) |
|---|---|---|
| Contract losses | 752,509 | nil |
| Loss of tangible property | 55,163 | 30,608 |
| Loss of intangible property | 86,505 | nil |
| Payment or relief to others | 24,221 | nil |
| Other losses | 797,574 | nil |
| Interest (no amount specified) | (--) | (--) |
| Claim preparation costs | 5,190 | (--) |
| Total | 1,721,162 | 30,608 |

324. Based on its findings regarding ACE's claim, the Panel recommends compensation in the amount of USD 30,608. The Panel finds the date of loss to be 4 August 1990.

## XII. MOUCHEL CONSULTING LIMITED

325. Mouchel Consulting Limited ("Mouchel") is a corporation organised according to the laws of the United Kingdom operating in the fields of road design and the supervision of roading projects. A number of Mouchel's claims arise out of losses allegedly suffered by Mouchel Middle East Limited, a 'related' company. This fact has been noted in the report where applicable.

326. In the "E" claim form, Mouchel sought compensation in the amount of KWD 653,246 (USD 2,260,367) for contract losses, payment or relief to others, financial losses and other losses. In its reply to the article 34 notification and to a request for further information, Mouchel increased the total amount claimed for the existing loss elements and introduced new loss elements. It also advised that it was no longer seeking compensation for certain contingent claims which formed part of its original claim, because the events which would have triggered the contingent claims had not occurred. The Panel has only considered those losses contained in the original claim except where such losses have been withdrawn or reduced by Mouchel. Where Mouchel reduced the amount of losses in its reply to the article 34 notification and to the request for further information, the Panel has considered the reduced amount.

327. The Panel has reclassified elements of Mouchel's claim for the purposes of this report. The Panel therefore considered the amount of KWD 337,355 (USD 1,167,318) for loss of profits, loss of tangible property, payment or relief to others, financial losses and other losses, as follows.

Table 19. Mouchel's claim

| Claim element | Claim amount (USD) |
|---|---:|
| Loss of profits | 232,611 |
| Loss of tangible property | 76,699 |
| Payment or relief to others | 559,168 |
| Financial losses | 3,497 |
| Other losses | 295,343 |
| Total | 1,167,318 |

### A. Loss of profits

#### 1. Facts and contentions

328. Mouchel seeks compensation in the amount of KWD 67,225 (USD 232,611) for loss of profits which it expected to receive in relation to a roading project in Kuwait City (the "Roads Project"). The Roads Project involved

the construction of 11 kilometres of major urban motorways within the boundaries of Kuwait City. The Ministry of Public Works, Kuwait, was the employer (the "Ministry").

329. On 27 February 1982, Mouchel entered into contract EF/R/29 with the Ministry. Under this contract (the "Contract"), Mouchel agreed to provide design and supervision services for the Roads Project until 1987. Because the Ministry requested an expansion of the Project works (see paragraph 330, infra) with a consequent extension of time, Mouchel was still carrying out works under the Contract at the time of Iraq's invasion and occupation of Kuwait.

330. The value of the design services under the Contract was KWD 1,654,930. The value of the supervision services was KWD 6,799,165. Therefore the total value of the Contract at the date of its signature was KWD 8,454,095. The Ministry subsequently requested amendments to the scope of Mouchel's services under the Contract. Due to these contractual amendments, the value of the design services increased to KWD 4,409,899, with a consequential increase in the total contract value to KWD 11,209,064. There was no change to the value of the supervision services.

331. Mouchel stated that it had completed all design services and substantial components of the supervision services prior to 2 August 1990. The works requiring completion were parts of the supervision services of three contracts between the Ministry and local contractors which were executing the works.

332. Mouchel asserted that the actual framework for the provision of services and payment for those services did not reflect the total contract value stated in paragraph 330, supra. The Ministry authorised tranches of the total contract value. Mouchel would then carry out that work and only be paid the maximum value of the amount authorised. As at 2 August 1990, the Ministry had only authorised expenditure of KWD 7,713,819 since the date of the signing of the Contract. The figure of KWD 7,713,819 is the authorised contract value.

333. In its original claim submission, Mouchel calculated its alleged loss of profit as follows. As at 1 August 1990, the authorised contract value was KWD 7,713,819. The Ministry paid Mouchel the amount of KWD 6,983,117 for services performed until the same date. Therefore, the asserted unexecuted authorised value of the Contract was KWD 730,702 (authorised contract value less payments received).

334. Mouchel then applied a multiplier of 9.2 per cent for profits to give a figure for loss of profits in the amount of KWD 67,225 (730,702 multiplied by 9.2 per cent equals 67,225). Mouchel asserted that the figure of 9.2 per cent was "based on the overall rate applicable to supervision projects". The 'profit' level for work already performed was

"approved profit". That is to say, the Ministry had approved the 'profit' level.

335. This is consistent with the terms of the Contract, which provide not only the formula for the basis of the 'profit' under the Contract, but also the actual amount of the 'profit'. The approval process is also reflected in correspondence with the Ministry which Mouchel provided.

336. Mouchel resumed work under the Contract in 1992. However, it stated that the works which it carried out were not the same works which it had contracted to perform under the Contract. The post-liberation work constituted damage assessment of a number of the Roads Project components. Mouchel had had no prior involvement with some of these components before 2 August 1990. Further, it obtained some of the work following competition with another party and carried out other works in joint venture with other consultants.

### 2. Analysis and valuation

337. The requirements to substantiate a loss of profits claim have been stated by the Panel in paragraphs 16 and 17, supra.

338. In support of its claim, Mouchel provided copies of the following documents: the Contract (the Contract contains the budgets and tender sum analyses); a document entitled "Analysis of approved budget ceiling" which was stated to have been attached to one of the last invoices sent to the Ministry prior to the invasion; correspondence of various dates from the Ministry prior to 2 August 1990 authorising amendments to the Contract and defining the effect on Mouchel's entitlements; Mouchel's invoices attached to the correspondence detailing the reasons for the amendments; correspondence with the Ministry after the liberation of Kuwait regarding payment of outstanding amounts including detailed invoices; the final payment certificate No. 166 for the Roads Project dated 7 February 1993 (reflecting the position both before and after 1 August 1990); audited financial statements for Mouchel Middle East Limited for the years 1987-1993; and certified tax submissions for Mouchel Middle East Limited for the same period.

339. Although Mouchel provided satisfactory evidence of some level of gross profit between 1988 and 1990, and of net profit in 1989 and 1990, Mouchel must establish that its claim meets the requirements of decision 9 (see paragraph 14, supra). Mouchel must prove that the continuation of the Contract was rendered impossible by Iraq's invasion and occupation of Kuwait. Further, decision 9 indicates a requirement that profits should be measured over the life of the Contract. Mouchel must demonstrate that the Contract would have been profitable as a whole. It is not sufficient to prove a profit at any stage before the completion of the Roads Project. In other words, and consistent with the position the E3 Panel has adopted in its previous reports, claimants must provide evidence that establishes with

reasonable certainty ongoing and expected profitability to support a claim for loss of profits. In the absence of such evidence, the Panel will not recommend compensation for loss of profits.

340. There are two issues which arise in the context of the Panel's consideration of whether the claimed losses are direct. The issues are the effect of the resumption of the Contract in 1992 and whether Mouchel demonstrated that Iraq's invasion and occupation of Kuwait caused Mouchel to terminate its supervision work under the Contract on 2 August 1990.

341. In relation to the issue of the effect of the resumption of the Contract, Mouchel asserted that, had Iraq's invasion and occupation of Kuwait not occurred, it would have completed the supervision works under the Contract. Due to this event, it was unable to complete its work until 1993. However, the work in 1992 and 1993, while still carried out and invoiced under the Contract, was of a different nature to that originally agreed to. It was in the nature of new or reconstruction work rather than supervision. In other words, Mouchel stated that there was no overlap between the work it carried out prior to Iraq's invasion and occupation of Kuwait and the work it carried out post-liberation. Mouchel stated that this is established by the fact that it had to compete with other consultants or enter into joint ventures with them, in order to secure the work. Mouchel recognised that any overlap represents work for which Mouchel suffered no loss except for the interest on that amount between 2 August 1990 and the date of payment.

342. Mouchel provided evidence regarding the anticipated scope of the services which it stated it actually provided to the Ministry under the Contract in 1992 and 1993. This was a document from Mouchel Middle East Limited to the Ministry in November 1991 called a "Technical and Financial Proposal". This document indicates that the post-liberation works were to be remedial works. The Panel considers that notwithstanding the absence of documentary evidence concerning the actual scope of the post-liberation works, the "Technical and Financial Proposal" is sufficient evidence verifying Mouchel's claim.

343. In relation to the issue of whether Iraq's invasion and occupation of Kuwait caused Mouchel to terminate the Project works on 2 August 1990, Mouchel provided sufficient evidence to establish that its performance under the Contract stopped on 2 August 1990 as a result of Iraq's invasion and occupation of Kuwait and did not resume until 1992. Its employees stopped working. Some were able to leave, while others were detained for a considerable period. The Panel also notes that the evidence which Mouchel provided establishes that it was the Ministry which was responsible for the extension to the Contract. The Panel is satisfied that Mouchel demonstrated that the claimed loss of profits under the Contract is a direct result of Iraq's invasion and occupation of Kuwait.

344. The final issue is the validity of Mouchel's valuation of its claim

for loss of profits. The terms of the Contract establish what the Ministry would pay Mouchel for 'profit' under the Contract. However, the Panel's expert consultants have analysed Mouchel's claim and consider that the claimed 'profit' is a notional figure, not an actual figure. Based on Mouchel Middle East Limited's audited financial statements and tax submissions, Mouchel's asserted level of profit of 9.2 per cent is too high. Mouchel Middle East Limited had other direct costs for its operations, such as local office administration expenses. The earnings from the Contract contributed towards these costs. Mouchel did not take these additional costs into account in formulating its claim for loss of profits.

345. Mouchel's assertion that it was deriving net profit from the Contract is substantiated by Mouchel Middle East Limited's audited financial statements and tax submissions for the period 1988-1990. Mouchel achieved a gross profit from its operations in Kuwait in the years 1988, 1989 and 1990, and a net profit in 1989 and 1990 (KWD 20,160 and KWD 111,498 respectively). Further, the financial statements demonstrate that the Contract contributed significantly to Mouchel's profitability during this period.

346. The Panel requested its expert consultants to perform a valuation of the loss. The Panel's expert consultants calculated that after consideration of the other direct costs referred to in paragraph 344, supra, the Contract contributed an average of 6.86 per cent of Mouchel's fee income between 1988 and 1990. The expert consultants applied this percentage to the authorised contract value of KWD 730,702 and concluded that Mouchel had established a loss of profits in the amount of KWD 50,126 as at 2 August 1990 (730,702 multiplied by 6.86 per cent).

347. The Panel finds that Mouchel provided sufficient evidence to substantiate its loss of profits claim. The Panel considers that the methodology utilised by its expert consultants provides an appropriate methodology to assess Mouchel's loss of profits. The Panel accepts the valuation of its expert consultants. The Panel recommends compensation in the amount of KWD 50,126 (USD 173,446).

### 3. Recommendation

348. The Panel recommends compensation in the amount of USD 173,446 for loss of profits.

## B. Loss of tangible property

### 1. Facts and contentions

349. Mouchel seeks compensation in the amount of KWD 22,166 (USD 76,699) for loss of tangible property. The claim is for vehicles, domestic and office furniture and equipment in Kuwait at the time of Iraq's invasion and occupation of Kuwait.

350. Mouchel stated that during Iraq's invasion and occupation of Kuwait, its properties were looted and soiled, and the items damaged or taken. One of Mouchel's employees inspected the properties on and after 15 March 1991, taking photographs of the damage. Apart from some personal effects of Mouchel's employees, "there was nil effective recovery". When the Contract resumed in 1992, all office equipment allegedly had to be replaced. The computers were damaged beyond repair.

351. The amount claimed represents the net book value of these items as at 31 July 1990. Mouchel did not individually summarise the items.

### 2. Analysis and valuation

352. In support of its claim for loss of tangible property, Mouchel provided photographs of items of tangible property. Although the photographs of the items of domestic property do depict damage, Mouchel made no attempt to identify which items depicted in the photographs belonged to it and which belonged to its employees. The photographs of alleged damage to the office properties depicted some disorder but no damage. The Panel therefore finds that the photographic evidence is inconclusive.

353. The only evidence provided by Mouchel apart from the photographs are audited financial statements for the years 1987-1993 and tax submissions for the same period. The statements assign value to global descriptions of tangible property. Mouchel stated in its reply to the article 34 notification that the audited figures should be accepted as evidence of the presence and (conservative) value of the goods in Kuwait.

354. Mouchel provided no other evidence that it owned the items or indeed of the existence of individual items in Kuwait. It was requested to provide documentary evidence in the article 34 notification, such as purchase invoices and customs records. Mouchel replied that its Kuwait branch was "largely autonomous". It further stated that:

> "documentation existed only in Kuwait. The files regarding property and inventories contained receipts signed by staff. These files as well as all personnel files which might contain addresses, leases etc were it appeared destroyed by our own staff in hiding in Kuwait. They wanted there to be no clue as to their whereabouts in hiding".

355. The Panel finds that Mouchel failed to provide sufficient evidence to support its claim. Further, the Panel finds that the circumstances alleged by Mouchel to justify the lack of evidence do not adequately recognise the fact that although the branch was stated to be "largely autonomous", the entity holding the contracts, Mouchel, was at that time a United Kingdom

partnership. The Panel considers it is reasonable to assume that there should have been some duplication of relevant evidence outside Kuwait.

356. The Panel finds that Mouchel failed to provide sufficient evidence which demonstrated its title to or right to use the assets alleged to have been lost or damaged, and the value and the presence of the tangible property in Kuwait.

### 3. Recommendation

357. The Panel recommends no compensation for loss of tangible property.

## C. Payment or relief to others

### 1. Facts and contentions

358. Mouchel seeks compensation in the amount of KWD 161,599 (USD 559,168) for payment or relief to others. The claim is for salary payments, payments on termination of employment, the cost of flights repatriating its detained employees and miscellaneous evacuation costs.

359. Mouchel stated that it had approximately 80 employees working on the Roads Project and other projects in Kuwait at the time of Iraq's invasion of Kuwait. All of Mouchel's contracts were with the Ministry. Mouchel asserted that 32 of the employees were 'expatriates' (employees from the United Kingdom or Australia). Many had dependants living with them. The rest of the employees were 'local' employees. The 'local' employees were employees of various nationalities recruited in Kuwait.

360. Of the 32 expatriate employees, 17 were in Kuwait at the time of Iraq's invasion and occupation and thereafter they and their dependants were detained or were in hiding. The remaining 15 expatriates were on leave. In the middle of September 1990, the dependants of the detained expatriates were released. The 17 employees were detained until December 1990. The local employees were not detained.

361. The Panel notes that the claimed amounts of the various loss items claimed are unclear. Mouchel did not break them down in the claim submission in a meaningful way. The Panel recategorised the amounts claimed where appropriate.

#### (a) Salary payments - payment of contractual notice to expatriate employees

362. Mouchel seeks compensation in the amount of KWD 24,500 for salaries paid to the 15 expatriate employees who were outside Kuwait at the time of Iraq's invasion and occupation. Mouchel asserts that because Iraq's invasion and occupation of Kuwait prevented the continuation of the Roads Project and other works which it was carrying out in Kuwait, it consequently had to terminate these employees' contracts of employment, paying them two months' salary in lieu of the contractual notice period.

363. Mouchel asserted that although it would normally have had to make salary payments to its expatriate employees representing two months' notice, and the Ministry would have reimbursed Mouchel, Mouchel would normally have given these employees two months' notice and asked them to work out their notice period. The conclusion of the notice period would have coincided with the conclusion of the particular project. Mouchel stated that it was not possible to make such arrangements in the present case because of Iraq's invasion and occupation of Kuwait, causing Mouchel to have to pay its employees for a period when they carried out no work.

### (b) Salary payments to detained employees

364. Mouchel seeks compensation in the amount of KWD 61,872 for salary payments to detained employees and to one local employee.

365. Following Iraq's invasion and occupation of Kuwait, 17 of Mouchel's expatriate employees were either moved to Iraq and deployed by the Iraqi forces as 'human shields' or were in hiding in Kuwait. Some of the families of these employees were also detained. The employees were released in December 1990.

366. Mouchel asserted that it was unable to give the detained or hidden employees notice of termination of their contracts. Mouchel provided "interim relief" to the detained employees through payment of 50 per cent of each employee's salary for the five month period in Pounds sterling (GBP).

367. In August 1991, the Ministry paid Mouchel for work done on the various projects until 2 August 1990. At this time, Mouchel paid the remaining 50 per cent of the salaries to the 17 employees, representing the remaining 50 per cent of their salaries for the period of their detention.

368. Mouchel also made a payment to a local employee who assisted the detained expatriate employees.

369. The Panel notes that the Commission has previously awarded compensation in category "C" to seven of the detained employees for lost salary payments during their period of detention (the "lost income awards"). The lost income awards include compensation for the payments which Mouchel made in August 1991.

### (c) Termination payments

370. Mouchel seeks compensation in the amount of KWD 64,324 for payments allegedly made to some of its expatriate and local employees as benefits receivable upon the termination of their employment. The payments were allegedly made because Iraq's invasion and occupation of Kuwait interrupted Mouchel's projects in Kuwait to such an extent that it could no longer employ the employees.

371. Mouchel asserted that it paid some of its expatriate employees termination payments, the amounts being determined in accordance with length of service.

372. Mouchel also made termination payments to its local employees as they received no contractual notice payments or any interim relief. The payments to the local employees appear to have been made according to Mouchel's "Terminal Indemnity policy".

(d) Airfares

373. Mouchel seeks compensation in the amount of KWD 8,716 for the cost of airfares repatriating its detained employees. The Government of the United Kingdom paid for this flight in December 1990 and subsequently sought reimbursement from Mouchel of the Pounds sterling equivalent, GBP 17,000.

374. Mouchel asserted that had its projects in Kuwait proceeded as planned, the Ministry would have reimbursed Mouchel for the cost of return airfares to the United Kingdom.

(e) Miscellaneous evacuation costs

375. Mouchel seeks compensation in the amount of KWD 2,187 for miscellaneous evacuation costs of eight expatriates in 1990 and 1991, for which Mouchel reimbursed these employees. Some costs relate to airfares and travel costs (including accommodation) for detained expatriate employees when they were released, including domestic travel costs. These costs do not overlap with the claim for airfares.

376. Mouchel also seeks compensation for costs incurred by the director of Mouchel responsible for the welfare of the detained employees, such as petrol costs.

## 2. Analysis and valuation

(a) Salary payments - payment of contractual notice to expatriate employees

377. Mouchel provided as evidence of its alleged losses copies of the following documents: bank statements; matching cheques; internal payment authorisations; correspondence with some expatriate employees; payroll summaries; some miscellaneous invoices; a sample contract of employment providing for a two month notice period; and an affidavit from a director of Mouchel verifying that the contract provided applied to all expatriate employees.

378. The Panel finds that the alleged loss is a direct loss in principle. A company in Mouchel's position would ordinarily ensure that it gave its employees sufficient notice so as to only pay them to provide productive work.

379. The Panel finds that Mouchel provided sufficient evidence of the alleged obligation to give two months' notice to all 17 employees. However, the evidence provided by Mouchel in relation to payments to three of the 17 employees was insufficient to demonstrate that the payments were in fact made in accordance with this obligation. The Panel accordingly finds that Mouchel demonstrated that the salary payments to the other 14 expatriate employees were incurred as a direct result of Iraq's invasion and occupation of Kuwait.

380. The Panel recommends compensation for the salary payments (contractual notice) in the amount of KWD 18,326 (USD 63,412).

(b) Salary payments to detained employees

381. Mouchel provided as evidence of its alleged losses copies of the following documents: bank statements; matching cheques; internal payment authorisations; correspondence with some of the detained employees; payroll summaries; a sample contract of employment; and some miscellaneous invoices. The evidence submitted establishes that Mouchel made salary payments in 1990 and 1992 in the amount of KWD 61,872.

382. The Panel finds that the alleged loss is a direct loss. It was reasonable for Mouchel to continue to pay the detained employees' salaries between August and December 1990 and the salary of the local employee who assisted the detained employees.

383. Upon reviewing the evidence, the Panel made a reduction for certain inconsistencies in the evidence which Mouchel provided.

384. In addition, the Panel refers to paragraph 369 above and notes that a reduction must be made for the previous lost income awards to the seven detained employees. The Panel finds that the component of their lost income awards relating to compensation for the payments representing the remaining 50 per cent of their salaries for the period of their detention equals, and therefore extinguishes, Mouchel's claim for compensation for salary payments to the seven employees for the payments which Mouchel made in August 1991.

385. The Panel recommends compensation for salary payments to detained employees in the amount of KWD 47,934 (USD 165,861).

(c) Termination payments

386. Mouchel provided as evidence of its alleged losses copies of the following documents: correspondence with the local employees which referred to a "Terminal Indemnity policy" under which the local employees were to receive payment according to their length of service; a sample contract of employment for expatriate employees; and audited financial statements.

(i) Local employees

387. The Panel notes that, in Mouchel's reply to the article 34 notification, it stated that the payments to both the expatriate employees and the local employees for which Mouchel seeks compensation were made 'ex gratia'.

388. The Panel nevertheless considers that Mouchel provided sufficient evidence to establish an obligation on the part of Mouchel to make the payments to the local employees and that the obligation was triggered by Iraq's invasion and occupation of Kuwait. Mouchel's financial statements prepared in the years prior to Iraq's invasion and occupation of Kuwait demonstrate that Mouchel made provision for these payments on the basis that it was subject to a legal obligation to its local employees. Mouchel advised the Panel that its auditors made this provision because it was prudent to do so.

389. However, because Mouchel made provision for these payments in its accounts, the Panel finds that Mouchel would have made these payments regardless of the reason for termination of the employment relationship. This is confirmed by Mouchel's statement in reply to the article 34 notification that "in respect of termination costs it is clear that all reasonable costs in connection with demobilization would have been payable. However these cost would have been denominated in terms of other components to this claim." Mouchel therefore failed to demonstrate that the cost of the termination payments to the local employees was suffered as a direct result of Iraq's invasion and occupation of Kuwait.

(ii) Expatriate employees

390. Although Mouchel provided a sample contract of employment, it failed to provide evidence of its asserted legal obligation to make termination payments to expatriate employees, such as extracts from applicable laws which actually established the obligation to make such payments. Moreover, while the financial statements refer to Kuwaiti labour laws, Mouchel stated that the application of these laws to the expatriate employees was unclear and that it never acknowledged their application to expatriate employees. Finally, Mouchel stated that the payments were in fact made to relieve particular hardship. This indicates that the payments were truly ex gratia. The Panel accordingly finds that Mouchel failed to demonstrate that the cost of the termination payments to the expatriate employees was suffered as a direct result of Iraq's invasion and occupation of Kuwait.

(d) Airfares

391. Mouchel provided no evidence of payment of the airfares or of Mouchel's payment of the bill which it allegedly received from the Government of the United Kingdom. The Panel finds that Mouchel provided insufficient evidence to substantiate its alleged loss.

### (e) Miscellaneous evacuation costs

392. Mouchel provided as evidence of its alleged losses copies of the following documents: bank statements; matching cheques; internal payment authorisations; correspondence with employees and their dependants; invoices; and receipts. These documents indicate that the travel costs were incurred in the course of repatriation of expatriate employees from Kuwait and Saudi Arabia once they were released from detention, to their homes in the United Kingdom. The evidence provided indicates that associated hotel costs were incurred en route.

393. Mouchel normally paid for its employees' travel costs, and was then reimbursed by the Ministry. This practice was brought to an end by Iraq's invasion and occupation of Kuwait. The Panel therefore finds that all of the travel costs incurred by the detained employees and reimbursed by Mouchel were suffered as a direct result of Iraq's invasion and occupation of Kuwait.

394. The Panel recommends compensation for miscellaneous evacuation costs in the amount of KWD 795 (USD 2,751).

395. The remainder of the costs were incurred by the Mouchel director. Mouchel provided insufficient evidence of why the costs were incurred. The Panel finds that Mouchel failed to submit sufficient evidence to demonstrate that the alleged costs were incurred as a direct result of Iraq's invasion and occupation of Kuwait.

### 3. Recommendation

396. The Panel recommends compensation in the amount of USD 232,024 for payment or relief to others.

## D. Financial losses

### 1. Facts and contentions

397. Mouchel seeks compensation in the amount of KWD 1,011 (USD 3,497) for "bond costs". Mouchel provided no explanation of the claim. It appears from the evidence provided that Mouchel gave a bond or guarantee to Gulf Bank of Kuwait in the amount of KWD 145,000, and that the amount sought represents charges for "the period to 24 July 1991" in respect of the bond or guarantee.

### 2. Analysis and valuation

398. Mouchel provided as evidence of its alleged losses copies of an internal payment authorisation, and a bank statement and debit advice from a United Kingdom bank. The evidence establishes Mouchel's payment of the amount sought. However, Mouchel provided no evidence of the circumstances resulting in its entry into the bond or guarantee or the reason for payment

of the amount paid. The Panel finds that Mouchel failed to demonstrate that the alleged loss was suffered as a direct result of Iraq's invasion and occupation of Kuwait.

### 3. Recommendation

399. The Panel recommends no compensation for financial losses.

## E. Other losses

### 1. Facts and contentions

400. Mouchel seeks compensation in the amount of KWD 85,354 (USD 295,343) for other losses. The claim is for the amount allegedly paid by Mouchel to settle a rental judgment and associated costs (the "rental judgment"), and certain costs associated with resuming its activities in Kuwait after the liberation of Kuwait (the "restart costs").

#### (a) Rental judgment

401. Mouchel stated that at the time of Iraq's invasion and occupation of Kuwait, it leased many Kuwaiti properties for the use of its employees. The Ministry was responsible for reimbursing Mouchel for these rental costs.

402. Mouchel asserted that one lessor succeeded in obtaining a judgment from a Kuwaiti court for unpaid rent which accrued during Iraq's occupation of Kuwait and until 1 June 1991, in the amount of KWD 18,391. According to Mouchel, the Kuwaiti courts did not consider Iraq's invasion and occupation of Kuwait as a valid legal reason for relieving lessees of their liability. The Ministry refused to pay the rent. Mouchel alleged that it settled this dispute by the payment of KWD 5,250 to the lessor on 25 April 1994. Mouchel also seeks compensation in the amount of KWD 300 for legal fees which it paid to its lawyers in Kuwait to advise on the claim.

#### (b) Restart costs

403. Mouchel stated that in 1991 and 1992, it incurred substantial costs to re-establish its pre-invasion position in Kuwait. Some costs were associated with attending to the potential recovery of assets, and can be seen as attempts to mitigate loss. Some costs were associated with attempts to regain involvement in the contracts forming the Roads Project. The remainder of the costs represent losses for 1991 and 1992 for which Mouchel did not receive any subsequent credit.

404. Mouchel seeks compensation in the amount of KWD 79,804. This figure represents the amount of Mouchel's losses between August 1990 and July 1992 as shown in the profit and loss statements which Mouchel originally provided. The Panel notes that in its reply to the article 34 notification, Mouchel provided amended financial statements containing a

higher figure of KWD 86,443. As is stated in paragraph 326, supra, the Panel has based its review on the original (lower) figure.

## 2. Analysis and valuation

### (a) Rental judgment

405. Mouchel provided as evidence of the settlement and legal fees, copies of the following documents: a letter from Mouchel to the lessor dated 10 June 1991; an untranslated copy of the judgment; and the settlement agreement with the lessor signed on 25 April 1994.

406. Mouchel was requested in the article 34 notification to provide the lease agreement and a translated copy of the judgment. Mouchel failed to provide a translated copy of the judgment. Mouchel stated that it had provided a copy of the lease. It supplied several documents in Arabic, which have not been translated.

407. The letter and settlement agreement constitute evidence demonstrating that there was a dispute between Mouchel and a lessor regarding the payment of rental for at least one property during the period of Iraq's invasion and occupation of Kuwait and afterwards, that the lessor succeeded in obtaining judgment for the rental, that the dispute was settled for a smaller amount (KWD 5,250) and that Mouchel paid this smaller amount.

408. However, because Mouchel failed to provide translated copies of the judgment or the lease, it is impossible to assess whether the loss claimed is direct. Mouchel provided no information as to the basis of the judgment. Further, without a translated copy of the lease, it is not possible to determine whether the alleged amount of the judgment was correct or that the settlement with the lessor was reasonable. In addition, Mouchel supplied no proof of payment of the legal fees.

409. In relation to the claim for the amount paid to the lessor in settlement of the rental judgment and the consequential legal fees, the Panel finds that Mouchel failed to establish that the losses were suffered as a direct result of Iraq's invasion and occupation of Kuwait.

### (b) Restart costs

410. Mouchel provided as evidence of the restart costs audited financial statements and tax submissions to the Kuwaiti authorities for 1991 and 1992.

411. Mouchel was requested in the article 34 notification to provide bank statements and evidence of its alleged expenses and costs, such as invoices or receipts. In its reply, Mouchel stated that where the alleged losses related to transactions in Kuwait post-liberation, it was not always possible to obtain receipts and many transactions were cash transactions. It also stated that where invoices exist, they had been archived and could

not be retrieved at short notice. Mouchel stated that the Panel should accept the audited figures, which are based on the individual documents.

412. The Panel finds that Mouchel could have and should have submitted documentary evidence of its post-liberation expenses in its original claim submission in the form of bank statements and invoices where available. The office of Mouchel Middle East Limited was re-established in Kuwait post-liberation and some records were obviously kept.

413. In relation to the claim for restart costs, the Panel finds that Mouchel failed to establish that it incurred such costs and losses, and that such costs and losses were incurred or suffered as a direct result of Iraq's invasion and occupation of Kuwait.

### 3. Recommendation

414. The Panel recommends no compensation for other losses.

## F. Recommendation for Mouchel

Table 20. Recommended compensation for Mouchel

| Claim element | Claim amount (USD) | Recommended compensation (USD) |
|---|---|---|
| Loss of profits | 232,611 | 173,446 |
| Loss of tangible property | 76,699 | nil |
| Payment or relief to others | 559,168 | 232,024 |
| Financial losses | 3,497 | nil |
| Other losses | 295,343 | nil |
| Total | 1,167,318 | 405,470 |

415. Based on its findings regarding the Mouchel's claim, the Panel recommends compensation in the amount of USD 405,470. In relation to Mouchel's claim for loss of profits, the Panel finds the date of loss to be 2 August 1990. In relation to Mouchel's claim for payment or relief to others, the Panel finds the date of loss to be 2 November 1990.

## XIII. INTERGRAPH CORPORATION

416. Intergraph Corporation ("Intergraph") is a corporation organised according to the laws of the United States of America and the parent company of Intergraph Middle East Limited ("IME"), a corporation organised according to the laws of Cyprus. IME allegedly sustained losses arising out of contracts to provide information systems in Kuwait. Intergraph states that IME's losses were assigned to Intergraph and that Intergraph credited IME for the losses incurred in Kuwait. Intergraph states that it is therefore the proper claimant to file a claim with the Commission.

417. In the "E" claim form, Intergraph sought compensation in the amount of USD 2,247,775 for contract losses, loss of tangible property, loss of income producing property, payment or relief to others and other losses (loss of petty cash and deposits).

418. The Panel has reclassified elements of Intergraph's claim for the purposes of this report. The Panel therefore considered the amount of USD 2,247,775 for contract losses, loss of tangible property, payment or relief to others and financial losses, as follows:

Table 21. Intergraph's claim

| Claim element | Claim amount (USD) |
|---|---|
| Contract losses | 1,440,877 |
| Loss of tangible property | 742,745 |
| Payment or relief to others | 59,800 |
| Financial losses | 4,353 |
| Total | 2,247,775 |

### A. Contract losses

#### 1. Facts and contentions

419. Intergraph seeks compensation in the amount of USD 1,440,877 for contract losses allegedly incurred in connection with IME's "billed uncollected receivables" and "unbilled receivables".

#### 2. Analysis and valuation

(a) "Billed uncollected receivables"

420. Intergraph seeks compensation in the amount of USD 307,196 for "billed uncollected receivables" owing from five debtors in Kuwait and Japan, for services performed in Kuwait.

421. Several of the outstanding amounts are debts which fell due and payable well before Iraq's invasion and occupation of Kuwait, including as far back as 1987. Intergraph did not provide an explanation as to why the debts were still outstanding at the time of Iraq's invasion and occupation of Kuwait. Moreover, Intergraph did not explain the direct link between the non-payment of the debts and Iraq's invasion and occupation of Kuwait.

422. In relation to the outstanding amounts which were due closer to the invasion date (for example, 25 July 1990), Intergraph did not explain why the amounts due were not recovered either before 2 August 1990, or following the end of Iraq's invasion and occupation of Kuwait, or what steps, if any, it or IME took to recover the outstanding amounts. Amounts were due upon receipt of IME's invoice.

423. Intergraph provided as evidence of its alleged losses an internally generated receivables analysis for each debtor and copies of most of the invoices. Intergraph also provided a letter of confirmation from IME's auditor that Intergraph's claim was prepared from and was in accordance with IME's records.

424. This Panel has found that a claimant must provide specific proof that the failure of a non-Iraqi debtor to pay was a direct result of Iraq's invasion and occupation of Kuwait. A claimant must demonstrate, for example, that such a business debtor was rendered unable to pay due to insolvency or bankruptcy caused by the destruction of its business during Iraq's invasion and occupation of Kuwait, or was otherwise entitled to refuse to pay the claimant. Intergraph did not supply such proof in relation to its claim for "billed uncollected receivables".

425. The Panel consequently finds that Intergraph did not demonstrate that its losses in connection with "billed uncollected receivables" were the direct result of Iraq's invasion and occupation of Kuwait.

(b) "Unbilled receivables"

426. Intergraph seeks compensation in the amount of USD 1,133,681 for "unbilled receivables" in relation to two projects in Kuwait.

(i) Kudams project

427. Intergraph seeks compensation in the amount of USD 790,590 for goods and services provided by IME on the Kudams project.

428. IME was a sub-contractor to Mitsui Engineering and Shipbuilding Co. ("Mitsui"), a Japanese company, on the Kudams project. The contract price was stated as KWD 720,539. IME invoiced Mitsui on 2 March and 19 July 1990 for 60 per cent of the contract price and received the corresponding payments. Intergraph alleges that it is still owed the remaining 40 per cent of the contract price, amounting to 288,216, less KWD 16,744 for services that were not performed and KWD 38,946 for "warranty, workshop,

and training . Intergraph then converted its claim denominated in Kuwaiti dinars to United States dollars.

429. Intergraph alleges that following Iraq's invasion and occupation of Kuwait, the letter of credit opened for the project expired and Mitsui would not approve any additional payments because Mitsui's equipment was stolen during Iraq's invasion and occupation of Kuwait.

430. Intergraph did not provide any evidence establishing that the failure of Mitsui to pay the outstanding amounts was the direct result of Iraq's invasion and occupation of Kuwait, by establishing, for example, that Mitsui was unable to pay the outstanding amounts due to bankruptcy or insolvency or was entitled to refuse to pay for any other reason.

431. Intergraph provided as evidence of its alleged losses, copies of invoices, a copy of the letter of credit dated 14 September 1989, and correspondence with Mitsui, including correspondence after Iraq's invasion and occupation of Kuwait, which deals with the subject of settling the outstanding amount. Intergraph also provided correspondence with Mitsui dated May 1991 requesting that the letter of credit be extended. Mitsui responded in August 1991 stating that it wanted to cancel the letter of credit due to the difficulties of fulfilling the contractual obligations experienced by both parties.

432. The Panel finds that Intergraph did not demonstrate that its losses in relation to the Kudams project were the direct result of Iraq's invasion and occupation of Kuwait. Intergraph failed to demonstrate that the failure of Mitsui to pay the amounts due and owing was attributable to Mitsui being rendered insolvent or liquidated as a direct result of Iraq's invasion and occupation of Kuwait or that Mitsui was otherwise entitled to refuse to pay IME.

### (ii) Ministry of Defence of Kuwait

433. Intergraph seeks compensation in the amount of USD 301,615 for unpaid systems delivered to the Ministry of Defence of Kuwait (the "Ministry").

434. Intergraph alleges that amounts falling due under the contract were to be invoiced to the Ministry through IME's local agent in Kuwait. The agent was billed on 24 May 1991, however, Intergraph alleges that he refused to pay.

435. In relation to the same debtor, Intergraph also seeks compensation in the amount of USD 41,476 representing unbilled freight and miscellaneous items for the Kuwait Municipality. Intergraph states that these items would have been billed but for Iraq's invasion and occupation of Kuwait.

436. Intergraph did not provide an explanation as to why the amounts due were not recovered following the end of Iraq's invasion and occupation of

Kuwait. Intergraph made no allegation that the Kuwait Municipality and the Ministry were unable to pay for the delivered systems.

437. The Panel finds that Intergraph did not demonstrate that its losses in relation to the Ministry were the direct result of Iraq's invasion and occupation of Kuwait. Intergraph failed to demonstrate that the failure of the Kuwait Municipality and the Ministry to pay the amounts due and owing was attributable to the Kuwait Municipality and the Ministry being rendered insolvent as a direct result of Iraq's invasion and occupation of Kuwait or that the Kuwait Municipality and the Ministry were otherwise entitled to refuse to pay IME.

### 3. Recommendation

438. The Panel recommends no compensation for contract losses.

## B. Loss of tangible property

### 1. Facts and contentions

439. Intergraph seeks compensation in the amount of USD 742,745 for loss of tangible property. The claim is for the alleged loss of tangible property (fixed assets and inventory) left in IME's Kuwait office.

440. Intergraph alleges that the managing director of IME visited the Kuwait office in February 1991. According to Intergraph, the office was open and a security guard informed the managing director that all of the property had been stolen by the Iraqi forces.

441. Intergraph originally classified an alleged loss in the amount of USD 720,097 as "loss of income producing property", but the losses are more appropriately classified as tangible property losses. The Panel has, therefore, considered these losses together with the balance of USD 22,648, which was classified in Intergraph's original claim submission as loss of tangible property.

### 2. Analysis and valuation

442. Intergraph provided as evidence of its alleged losses an undated internally generated table of "fixed assets" and an internally generated "fixed assets register" for its office equipment as at 30 November 1990. The printouts provide the equipment purchase date, cost, rate of depreciation, cumulative depreciation and attribute a net value of USD 17,322 to the equipment. In relation to the alleged lost inventory, Intergraph provided an internally generated, undated, inventory. Because the inventory list is undated, it is impossible to verify whether it was contemporaneous with Iraq's invasion and occupation of Kuwait. Intergraph did not provide any other evidence.

443. The Panel finds that Intergraph failed to provide sufficient evidence which demonstrated its title to or right to use, and the value and the presence in Kuwait of, the property.

### 3. Recommendation

444. The Panel recommends no compensation for loss of tangible property.

## C. Payment or relief to others

### 1. Facts and contentions

445. Intergraph seeks compensation in the amount of USD 59,800 for payment or relief to others. The claim is for the alleged costs of compensating IME's employees for the loss of personal items which were left behind in Kuwait.

446. IME had an office in Kuwait to support and service its customers. Intergraph alleges that four staff members were stationed in Kuwait, while IME's other staff travelled from Cyprus and other offices to Kuwait whenever their support was required. At the time of Iraq's invasion and occupation of Kuwait, Intergraph states that the branch office in Kuwait was abandoned and all employees left Kuwait. Intergraph states that the employees' personal property was stolen by the Iraqi forces and that IME compensated its employees for their losses.

### 2. Analysis and valuation

447. Intergraph provided as evidence of its alleged losses internally generated letters to the employees along with the employees' lists of personal items lost in Iraq. Intergraph did not provide any evidence that it actually compensated its employees.

448. The Panel finds that Intergraph failed to provide sufficient evidence in support of the alleged costs of compensating IME's employees for the loss of their personal items.

### 3. Recommendation

449. The Panel recommends no compensation for payment or relief to others.

## D. Financial losses

### 1. Facts and contentions

450. Intergraph seeks compensation in the amount of USD 4,353 for financial losses. The claim relates to funds in several accounts with the National Bank of Kuwait ("NBK"), which were allegedly stolen, including funds from a "petty cash" account. One of the accounts was in the name of IME's pre-invasion manager in Kuwait.

451. Intergraph alleges that it was unable to recover the remainder of the bank balances held with the NBK because the manager who was handling IME's Kuwait operations did not return after the war. Intergraph alleges that it does not have any other records, which would enable it to recover the balances.

452. Intergraph originally classified the claim for financial losses as "other losses", but the losses are more appropriately classified as financial losses.

### 2. Analysis and valuation

453. Intergraph provided as evidence of its alleged losses a ledger printout showing the bank balances at the NBK. It also provided a copy of a cheque, dated 20 November 1992, in the amount of 7,597 Pounds sterling (USD 11,708) paid by the NBK to IME's former manager, and correspondence evidencing the partial payment of one of the bank balances.

454. From the evidence provided, it is clear that Intergraph did receive partial payment in November 1992 through IME's former manager of the amount held in the account. Intergraph did not provide any evidence regarding the "petty cash" account.

455. The Panel finds that Intergraph failed to prove that the funds in the accounts were appropriated, removed, stolen or destroyed and, therefore, how it suffered any loss.

### 3. Recommendation

456. The Panel recommends no compensation for financial losses.

## E. Recommendation for Intergraph

Table 22. Recommended compensation for Intergraph

| Claim element | Claim amount (USD) | Recommended compensation (USD) |
|---|---|---|
| Contract losses | 1,440,877 | nil |
| Loss of tangible property | 742,745 | nil |
| Payment or relief to others | 59,800 | nil |
| Financial losses | 4,353 | nil |
| Total | 2,247,775 | nil |

457. Based on its findings regarding Intergraph's claim, the Panel recommends no compensation.

## XIV. PARSONS, DE LEUW, INC.

458. Parsons, De Leuw, Inc. ("Parsons") is a corporation organised according to the laws of the United States of America. At the time of Iraq's invasion and occupation of Kuwait, Parsons was operating under the name of De Leuw, Cather & Company in the area of the design and supervision of roading projects. De Leuw, Cather & Company changed its name to Parsons, De Leuw, Inc. in 1992.

459. Parsons seeks compensation on behalf of its wholly owned subsidiary, De Leuw, Cather International Limited, a corporation organised according to the laws of the United Kingdom. Parsons stated that it carried on its overseas business through De Leuw, Cather International Limited, which incurred the losses for which Parsons seeks compensation. In 1994, De Leuw, Cather International Limited assigned all of its rights to bring a claim before the Commission to Parsons.

460. In the "E" claim form, Parsons sought compensation in the amount of USD 1,338,966 for contract losses and other losses. The Panel has reclassified elements of Parsons' claim for the purposes of this report. The Panel also notes that Parsons made arithmetic errors in the calculation of its reclassified claim for payment or relief to others. The nature of the errors is described in paragraph 491, infra. The Panel therefore considered the amount of USD 1,265,503 for loss of profits, payment or relief to others and other losses, as follows:

Table 23. Parsons' claim

| Claim element | Claim amount (USD) |
|---|---:|
| Loss of profits | 599,842 |
| Payment or relief to others | 585,482 |
| Other losses | 80,179 |
| Total | 1,265,503 |

### A. Loss of profits

#### 1. Facts and contentions

461. Parsons seeks compensation in the amount of USD 599,842 for loss of profits which it expected to receive in relation to three projects. The projects, insofar as they concerned Parsons' participation, related to the design and construction of roads, and were underway or about to commence in Kuwait as at the date of Iraq's invasion and occupation of Kuwait. The Ministry of Public Works, Kuwait (the "Ministry") was the employer for all three projects.

462. Two of the projects were projects for the construction of the Sixth Ring Road (the "Sixth Ring Road Project") and the Ghazali Expressway (the "Ghazali Expressway Project") in and around Kuwait City. The third project was for the design of the Mubarak Al-Kabeer Hospital Complex Master Plan (the "Hospital Project").

463. Parsons asserted that all of the Projects were terminated by Iraq's invasion and occupation of Kuwait and that they were not resumed after the liberation of Kuwait.

### (a) The Sixth Ring Road Project

464. Under Agreement EF/R/32, Parsons agreed to provide supervision services for the Sixth Ring Road Project to the Ministry.

465. The date of the agreement was not supplied and it has not been possible from the limited evidence which Parsons provided to detail the nature of the Project or Parsons' responsibilities. It appears that Parsons and another consulting engineering company, Pan Arab Consulting Engineers of Kuwait ("PACE"), supervised the work of a construction company which was executing the Project works under Contract RA/64 between the construction company and the Ministry. Parsons did not explain PACE's role in relation to the contract works.

466. The budget for Parsons' services under the contract was KWD 3,475,686 by virtue of an amendment to the agreement (Amendment No. 5) dated 21 January 1987. Pursuant to Amendment No. 5, the works commenced on 1 March 1987 and the period for their completion was extended until 30 September 1990.

467. Parsons stated that all of its costs were reimbursed by the Ministry, except for salary and overheads from which it derived a 10 per cent level of 'profit'. Parsons asserted that this agreed 'profit' was equivalent to the amount of KWD 200,049 over the life of the agreement.

468. As at the date of Iraq's invasion of Kuwait, Parsons' performance under the agreement was substantially complete (approximately 76 per cent). Parsons stated that for its work until 2 August 1990, the Ministry had already paid Parsons the amount of KWD 182,341 in respect of the 'profit' component. Parsons seeks compensation for the unpaid 'profit' component in the amount of KWD 17,708 (USD 60,208).

### (b) The Ghazali Expressway Project

469. A consortium comprising Parsons and PACE entered into Agreement EF/R/45 with the Ministry under which the consortium agreed to provide engineering supervision services for the Ghazali Expressway Project. The date of the agreement was not supplied. The Panel notes that the "F3" Panel recently considered a claim by the Ministry in relation to the Ghazali Expressway Project and reviewed evidence relevant to Parsons'

claim. The Ministry asserted that the agreement with Parsons and PACE had not been signed as at 2 August 1990, although the contract had been negotiated and was expected to be signed in September 1990.

470. Under the extract from Agreement EF/R/45 which Parsons provided to the Panel, Parsons and PACE agreed to supervise Contract RA/91 between the Ministry and the construction company which was expected to execute the Project works. As between Parsons and PACE, Parsons was the leader of the consortium and was contractually responsible to the Ministry in all respects. PACE provided employees and earned income and 'profit' from its contribution.

471. Parsons stated that as at the date of Iraq's invasion of Kuwait, its performance had not yet commenced under the agreement. Performance was due to start on 1 September 1990. Parsons asserted that under the agreement, it was entitled to receive the amount of KWD 153,010 for 'profit' over the life of the agreement. As with the agreement for the Sixth Ring Road Project, the Ministry reimbursed Parsons for most of its costs. The 'profit' component represented 10 per cent of salaries and overhead and was a figure which was agreed with the Ministry.

472. Parsons seeks compensation in the amount of KWD 153,010 (USD 520,234) for the profit which it expected to receive over the life of the agreement for the Ghazali Expressway Project.

(c) The Hospital Project

473. Parsons entered into a sub-contract with PACE dated 1 August 1988 for the provision of traffic analysis consultancy services in relation to the Hospital Project. The principal agreement, Agreement SPF/08/88, between PACE and the Ministry, was dated 19 July 1988.

474. Parsons' obligations under the sub-contract were limited to the survey and design of traffic services.

475. PACE agreed to pay Parsons the amount of KWD 15,706 under the sub-contract. Parsons stated that there were three phases of work under the sub-contract. It stated that it had completed and been paid for the first phase of its work, but that work on the second and third phases had not commenced as at 2 August 1990.

476. Parsons asserted that under the sub-contract, it would have received the amount of KWD 5,706 for its work on the second and third phases. It asserted that all of its costs were fixed, so that the amount of KWD 5,706 represented its profit component for the sub-contract.

477. Parsons seeks compensation in the amount of KWD 5,706 (USD 19,400) for the profit which it expected to receive for the balance of the sub-contract.

### 2. Analysis and valuation

478. The requirements to substantiate a loss of profits claim have been stated by the Panel in paragraphs 16 and 17, supra.

479. In support of its claims in relation to all of the Projects, Parsons provided as evidence two affidavits of an employee of Parsons who was the Kuwait office manager at the time of Iraq's invasion and occupation of Kuwait. The affidavits support Parsons' assertions as to the effect of Iraq's invasion and occupation of Kuwait on the Projects it was undertaking and verify the calculations of its claimed losses.

480. In support of its claim in relation to the Sixth Ring Road Project, Parsons provided a copy of Amendment No. 5 to the agreement, dated 21 January 1987. The agreement itself was not provided. Parsons also supplied correspondence from Parsons to the Ministry in January 1987 attaching a budget proposal. This correspondence appears to have formed the basis for the proposal, which was accepted with minor amendments by Parsons on 21 January 1987. The budget proposal contained extensive payment terms and a detailed breakdown of the 'profit' figure. Finally, Parsons provided a letter from Parsons to the Ministry dated 18 October 1991 seeking payment for work carried out up to 3 August 1990 and attaching a detailed invoice.

481. In relation to the Ghazali Expressway Project, Parsons provided limited extracts from Agreement EF/R/45 and correspondence with the Ministry regarding the date of commencement of the agreement.

482. In relation to the sub-contract for the Hospital Project, Parsons provided the sub-contract itself and one letter to PACE dated prior to the sub-contract.

483. In the article 34 notification, Parsons was asked to provide, inter alia, the following financial documentation for each Project: audited financial statements; budgets; management accounts; turnover statements; original bids and tender sum analyses; time schedules; profit/loss statements; finance costs and head office costs. As has been explained in paragraph 480, supra, Parsons provided the budgets, time schedules and tender sum analyses for the Amendment to the agreement for the Sixth Ring Road Project in the form of the contractual documentation for that Project itself in its original claim submission. Parsons did not reply to the article 34 notification. Consequently, it did not provide the requested documentation in relation to any of the other Projects at any time.

484. Parsons supplied evidence which established that the Sixth Ring Road and Hospital Projects were ongoing as at 2 August 1990 and were interrupted by Iraq's invasion and occupation of Kuwait. It also supplied evidence which established that the Ghazali Expressway Project was likely to commence in September 1990.

485. However, Parsons provided insufficient evidence of the terms of the agreements for the Sixth Ring Road and the Ghazali Expressway Projects to establish that Parsons suffered any losses and that the alleged losses were suffered as a direct result of Iraq's invasion and occupation of Kuwait. Without evidence of all the relevant contractual terms, the Panel is unable to assess Parsons' assertion that it was contractually entitled to receive the alleged 'profit' under either agreement.

486. In relation to the sub-contract for the Hospital Project, Parsons supplied sufficient evidence of the contractual terms, including the terms of payment. However, Parsons provided no evidence to substantiate its assertion that all of its costs were fixed. Such evidence would include invoices for work carried out under the first phase. The Panel consequently considers that, in the absence of evidence regarding Parsons' actual costs in relation to the sub-contract for the Hospital Project, Parsons failed to demonstrate that it suffered any losses and that the alleged losses were suffered as a direct result of Iraq's invasion and occupation of Kuwait.

487. Moreover, the Panel finds that Parsons failed to provide sufficient information and evidence to assess whether its claimed 'profit' under all three agreements represented the actual profit which Parsons could have expected to earn. In the absence of audited financial statements, in particular, the Panel was unable to verify Parsons' assertions with respect to its profitability under all three agreements.

### 3. Recommendation

488. The Panel recommends no compensation for loss of profits.

## B. Payment or relief to others

### 1. Facts and contentions

489. Parsons seeks compensation in the amount of USD 585,482 for payment or relief to others. The claim is for the alleged costs of salary and other payments made to 18 expatriate employees, many of whom were detained by the Iraqi authorities until December 1990, and payments of termination benefits to 45 local employees recruited in Kuwait.

490. Parsons stated that all of its employees were working on the Sixth Ring Road Project at the time of Iraq's invasion and occupation of Kuwait.

491. The Panel notes that in its Statement of Claim, Parsons sought compensation for payment or relief to others in the amount of USD 658,945, including the amount of USD 140,332 for payment of 'completion bonuses' to expatriate employees. However, a review of the supporting schedules showed that Parsons' claim for the 'completion bonuses' actually totalled USD 79,957, a difference of USD 60,375. Further, in the "E" claim form and the Statement of Claim, Parsons calculated that all of the schedules in

relation to its claim for payment or relief to others supported a claim amount of USD 658,945. However, the Panel found that these schedules only supported a claim amount of USD 645,857, representing a difference of USD 13,088. The Panel consequently recalculated the amount of Parsons' claim as a claim in the amount of USD 585,482 (USD 658,945 less USD 60,375 less USD 13,088).

492. Parsons alleged that under the agreement for the Sixth Ring Road Project, the Ministry was required to reimburse Parsons for almost all of the payments for which Parsons seeks compensation as direct costs. Parsons stated that it would have recovered the balance of the payments as part of its charge for overheads.

(a) Expatriate employees

493. In relation to the expatriate employees who were detained, Parsons asserted that it was unable to terminate their employment while they were detained. Once these employees were released or escaped, Parsons gave them 30 days' notice of termination of their employment. Parsons asserted that it was also required to give, and did give, the expatriate employees who were not detained, the same period of notice commencing on 12 August 1990. Parsons alleged that it was contractually required to make salary payments to its expatriate employees while they were detained, and to all of its expatriate employees during the notice periods under their respective contracts of employment, in the amount of USD 202,853.

494. Parsons further alleged that it was contractually required to make payments to its employees for the following benefits which accrued during this period: medical and life insurance premiums in the amount of USD 8,779; holiday pay in the amount of USD 67,594; relocation, travel and living allowances in the total amount of USD 26,370; and the costs of storage of employees' property in the amount of USD 12,524. Parsons also alleged that the employees were also entitled to receive 'completion bonuses', equivalent to 10 per cent of their base salary, upon the termination of their employment, in the amount of USD 79,957.

495. Finally, Parsons sought reimbursement of the amounts which it paid to some of these employees for airfares and associated travel costs to their homes after they were released or escaped in the amount of USD 24,872.

496. Parsons accordingly seeks compensation in the amount of USD 422,949 for payments to the expatriate employees.

(b) Local (Kuwaiti) employees

497. In relation to the local employees, Parsons asserted that it was required under Kuwait's labour laws to pay these employees termination benefits based on their length of service. Parsons seeks compensation for payment of terminal benefits in the amount of USD 162,533.

### 2. Analysis and valuation

498. Parsons provided as evidence of its alleged losses copies of the following documents: the two affidavits referred to in paragraph 479, supra; Amendment No. 5 to the agreement for the Sixth Ring Road Project; Parsons' invoice dated 18 October 1991 sent to the Ministry regarding payment of amounts earned until 3 August 1990; air tickets; invoices; letters from Parsons to the expatriate employees with calculations of proposed payments; internal payment authorisations; records relating to employee leave; cheques; and letters and notes from the employees confirming calculations and receipt of payments.

499. The Panel requested the secretariat to carry out cross-checks of individual claims filed by Parsons' employees. The individual claims contained evidence of the contractual terms of employment for the expatriate employees and evidence of their detention.

#### (a) Expatriate employees

500. Parsons provided substantial evidence of payment to the expatriate employees of the amounts claimed. After considering the totality of the evidence before it, the Panel finds that there is sufficient evidence of Parsons' obligation to make all of the payments for which it seeks compensation.

501. The Panel also finds that the documentation relating to Amendment No. 5 to the agreement for the Sixth Ring Road Project refers to all of the loss elements for which Parsons seeks compensation as being payable by Parsons to the employees. The majority of the loss elements claimed were direct costs reimbursable by the Ministry. Further, the invoice dated 18 October 1991 provided by Parsons links the employees' names with their positions and salary and other payments during the period of 14 July until 3 August 1990. The Panel finds that the figures and entitlements provided for in Amendment No. 5 to the agreement for the Sixth Ring Road Project and the invoice correspond with the evidence of payments made to the employees.

502. The Panel is satisfied that this evidence establishes that Parsons' claims for all payments to the 18 expatriate employees are, in principle, direct losses. However, the Panel also notes that while Parsons claimed for these costs in relation to all 18 expatriate employees, the evidence which Parsons and its employees provided indicated that only 13 employees were actually detained.

503. Further, in relation to the claim for holiday pay, the evidence indicates that Parsons in fact seeks compensation for pay accrued up to 2 August 1990. Parsons should have been reimbursed these payments by the Ministry when the Ministry paid Parsons' invoice of 18 October 1991. In relation to holiday pay accrued during the period of the employees' detention and notice period, the contracts of employment and leave records

are insufficiently exact to allow the verification of Parsons' calculations.

504. In relation to the alleged payment of insurance premiums, the Panel finds that Parsons provided insufficient proof of payment.

505. In relation to salary payments and the completion bonuses, there were some discrepancies between the amounts which Parsons paid to the 18 employees, their entitlements according to their contracts of employment, and their entitlements as set out in the agreement for the Sixth Ring Road Project. The Panel finds that there is sufficient evidence to establish Parsons' obligation to make these payments to the 13 expatriate employees for the period of their detention and subsequent notice period, using the employees' base salary (that is, their salary excluding any benefits or uplifts) as the basis for calculation, in the amount of USD 195,412. The Panel reaches the same conclusion in relation to the claim for salary payments to the five expatriate employees who were not detained, in the amount of USD 42,662.

506. In relation to the other loss elements, the Panel finds that there is sufficient evidence to establish that the claims for storage costs, relocation, travel and living allowances, and airfares, are direct losses in the amount of USD 42,207.

### (b) Local (Kuwaiti) employees

507. Parsons provided only general evidence in support of its claim for payment of terminal benefits to the local employees. Parsons failed to provide any specific documentary evidence in relation to this claim, and, in particular, that it actually paid the amounts claimed. The Panel therefore recommends no compensation for payment of terminal benefits to the local employees.

### 3. Recommendation

508. The Panel recommends compensation in the amount of USD 280,281 for payment or relief to others.

## C. Other losses

### 1. Facts and contentions

509. Parsons seeks compensation in the amount of USD 80,179 for other losses.

510. Parsons alleged that after the liberation of Kuwait, the Ministry advised it that the three Projects would not be resumed. Parsons had no other business in Kuwait and consequently closed its office there, thereby incurring the costs for which it seeks compensation. Parsons stated that the process of winding down its operations in Kuwait necessitated the

presence of employees of Parsons in Kuwait at various times, as well as the assistance of legal representatives of Parsons. Parsons had to arrange the termination of domestic and office leases, and of its telephone accounts. Finally, Parsons asserted that it was contractually required to arrange for the shipment of the personal effects of its employees.

511. Parsons seeks compensation in the amount of USD 75,179 for the telephone, lease, legal, shipping and travel expenses which it allegedly incurred. Parsons claims a further contingent amount of USD 5,000 for any future closure costs.

### 2. Analysis and valuation

512. In support of its claim for other losses, Parsons provided copies of the following documents: invoices; correspondence with parties in Kuwait; internal payment authorisations; cheques; and documents evidencing transfer of funds. The Panel finds that the evidence provided constitutes sufficient evidence of payment of the majority of the costs claimed.

513. However, Parsons failed to provide any evidence which demonstrated that the alleged losses were suffered as a direct result of Iraq's invasion and occupation of Kuwait. In order for costs of the kind alleged to be compensable, a claimant must show that the costs exceeded what it would ordinarily have had to pay to conclude its presence in Kuwait.

514. However, Parsons provided no evidence, and indeed made no assertion, that its presence in Kuwait was expected to continue after the completion of the three Projects. Of these Projects, only the Ghazali Expressway Project was a long term project. Parsons did not state how long the Project works were expected to take, but there is some documentation which enabled the Panel to assess the period of the contract as 49 months. This gives a finishing date for the Project of late 1994.

515. It is therefore likely that Parsons would have had to terminate its presence in Kuwait in the years following Iraq's invasion and occupation of Kuwait in any event, with attendant costs. Parsons failed to demonstrate that the costs which it did incur were in addition to the costs which it could have expected to pay had closure occurred in the normal course of business.

### 3. Recommendation

516. The Panel recommends no compensation for other losses.

### D. Recommendation for Parsons

Table 24. Recommended compensation for Parsons

| Claim element | Claim amount (USD) | Recommended compensation (USD) |
|---|---|---|
| Loss of profits | 599,842 | nil |
| Payment or relief to others | 585,482 | 280,281 |
| Other losses | 80,179 | nil |
| Total | 1,265,503 | 280,281 |

517. Based on its findings regarding Parsons' claim, the Panel recommends compensation in the amount of USD 280,281. The Panel finds the date of loss to be 2 November 1990.

## XV. RECOMMENDATIONS

518. Based on the foregoing, the Panel recommends the following amounts of compensation for direct losses suffered by the claimants as a result of Iraq's invasion and occupation of Kuwait:

(a) SHAL International: NIL;

(b) China Sichuan Corporation for International Techno-Economic Cooperation: USD 21,396;

(c) China Ningxia Islamic Corporation for International Economic and Technical Cooperation: NIL;

(d) The Arab Contractors "Osman Ahmed Osman & Co.": NIL;

(e) Campenon Bernard: NIL;

(f) Brückner Grundbau GmbH: NIL;

(g) Technika Hungarian Foreign Trading Company: USD 207,461;

(h) Transinvest Engineering and Contracting Limited: NIL;

(i) Associated Consulting Engineers S.A.L.: USD 30,608;

(j) Mouchel Consulting Limited: USD 405,470;

(k) Intergraph Corporation: NIL; and

(l) Parsons, De Leuw, Inc.: USD 280,281.

Geneva, 12 December 2000

(Signed) Mr. Werner Melis
Chairman

(Signed) Mr. David Mace
Commissioner

(Signed) Mr. Sompong Sucharitkul
Commissioner

# Annex VI

## Decision concerning the eighteenth instalment of E3 claims taken by the Governing Council of the United Nations Compensation Commission at its 105th meeting, held on 15 March 2001 at Geneva*

The Governing Council,

Having received, in accordance with article 38 of the Provisional Rules for Claims Procedure ("the Rules"), the report and recommendations made by the panel of Commissioners concerning the eighteenth instalment of "E3" claims, covering 12 claims, 1/

1. Approves the recommendations made by the panel of Commissioners, and, accordingly,

2. Decides, pursuant to article 40 of the Rules, to approve the amounts of the recommended awards concerning the claims covered in the report. The aggregate amounts per country, based on the recommendations contained in paragraph 518 of the report, are as follows:

| Country | Number of claims recommended for payment | Number of claims not recommended for payment | Amount of compensation claimed (USD) | Amount of compensation recommended (USD) |
|---|---|---|---|---|
| Canada | - | 1 | 78,883 | nil |
| China | 1 | 1 | 203,801 | 21,396 |
| Egypt | - | 1 | 7,582,359 | nil |

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* Previously issued as document S/AC.26/Dec.117 (2001).

1/ The text of the report appears in document S/AC.26/2001/3 (annex V above).

| Country | Number of claims recommended for payment | Number of claims not recommended for payment | Amount of compensation claimed (USD) | Amount of compensation recommended (USD) |
|---|---|---|---|---|
| France | - | 1 | 8,762,478 | nil |
| Germany | - | 1 | 3,961,045 | nil |
| Hungary | 1 | 1 | 821,799 | 207,461 |
| Lebanon | 1 | - | 1,721,162 | 30,608 |
| United Kingdom | 1 | - | 1,167,318 | 405,470 |
| United States | 1 | 1 | 3,513,278 | 280,281 |
| Total | 5 | 7 | 27,812,123 | 945,216 |

3. *Reaffirms* that when funds become available payments shall be made in accordance with decision 100 (S/AC.26/Dec.100 (2000)),

4. *Recalls* that when payments are made in accordance with decision 100, and pursuant to the terms of decision 18 (S/AC.26/Dec.18 (1994)), Governments shall distribute amounts received to the designated claimants in respect of approved awards within six months of receiving payment, and shall, not later than three months after the expiration of this time limit, provide information on such distribution,

5. *Requests* the Executive Secretary to provide a copy of the report to the Secretary-General, to the Government of the Republic of Iraq and to each respective Government.

# Annex VII

## Report and recommendations made by the Panel of Commissioners concerning the twelfth instalment of E4 claims*

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* Previously issued as document S/AC.26/2001/4.

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## Introduction

1. At its twenty-fourth session, held on 23-24 June 1997, the Governing Council of the United Nations Compensation Commission (the "Commission") appointed Messrs. Robert R. Briner (Chairman), Alan J. Cleary and Lim Tian Huat as the Panel of Commissioners (the "Panel") charged with reviewing "E4" claims. The "E4" population consists of claims submitted by Kuwaiti private sector corporations and entities, other than oil sector and environmental claimants, eligible to file claims under the Commission's "Claim Forms for Corporations and Other Entities" ("Form E").

2. A twelfth instalment consisting of 140 "E4" claims was submitted to the Panel on 1 August 2000, in accordance with article 32 of the Provisional Rules for Claims Procedure (S/AC.26/1992/10) (the "Rules").

3. Pursuant to article 38 of the Rules, this report contains the Panel's recommendations to the Governing Council concerning the twelfth instalment claims.

## I. OVERVIEW OF THE TWELFTH INSTALMENT CLAIMS

4. The twelfth instalment claims were selected from the population of approximately 2,750 "E4" claims on the basis of criteria that include, inter alia, the size, volume and complexity of the claims, the legal, factual, and valuation issues raised by the claims, and the date of filing of the claims with the Commission.

5. The twelfth instalment claimants filed losses aggregating Kuwaiti dinars ("KWD") 42,919,532 (approximately United States dollars ("USD") 148,510,491). The claimants also filed claims for interest totalling KWD 975,709 (approximately USD 3,376,156) and claim preparation costs aggregating KWD 216,616 (approximately USD 749,536).

6. The nature of the legal and factual issues raised in each claim and the amount of documentation provided in support of each claim has allowed the Panel to complete its verification of the claims within 180 days of the date on which the twelfth instalment claims were submitted to the Panel.

7. All of the claimants in the twelfth instalment operated in Kuwait prior to Iraq's invasion and occupation of Kuwait. Most claimants conducted trading operations dealing in a variety of goods. Some claimants were engaged in manufacturing and service industries.

8. The two most common loss types asserted by claimants in this instalment are loss of tangible property (mainly stock, furniture, fixtures, equipment and vehicles) and loss of earnings or profits. Claimants have also sought

compensation for uncollectible receivables, restart costs, interest and claim preparation costs as "other losses".

## II. THE PROCEEDINGS

9. Before the twelfth instalment claims were submitted to the Panel, the secretariat undertook a preliminary assessment of the claims in accordance with the Rules. This review is described in paragraph 11 of the "Report and recommendations made by the Panel of Commissioners concerning the first instalment of 'E4' claims" (S/AC.26/1999/4) (the "First 'E4' Report"). The results of the review were entered into a centralized database maintained by the secretariat (the "Claims Database").

10. Originally 16 claims presented formal deficiencies and the secretariat issued notifications to these claimants pursuant to article 15 of the Rules. The claimants corrected all formal deficiencies.

11. A substantive review of the claims was undertaken to identify significant legal, factual and valuation issues. The results of the review, including the significant issues identified, were recorded in the Claims Database.

12. The Executive Secretary of the Commission submitted reports 30 and 31 dated 17 February 2000 and 28 April 2000, respectively, to the Governing Council in accordance with article 16 of the Rules. These reports covered, inter alia, the twelfth instalment of "E4" claims and presented the significant legal and factual issues identified in these claims. A number of Governments, including the Government of Iraq, submitted additional information and views in response to the Executive Secretary's article 16 reports.

13. At the conclusion of the (i) preliminary assessment; (ii) substantive review; and (iii) article 16 reporting, the following documents were made available to the Panel:

(a) The claim documents submitted by the claimants;

(b) The preliminary assessment reports prepared under article 14 of the Rules;

(c) Information and views of Governments, including the Government of Iraq, received in response to the article 16 reports; and

(d) Other information deemed, under article 32 of the Rules, to be useful to the Panel for its work.

14. For the reasons stated in paragraph 17 of the First "E4" Report, the Panel retained the services of an accounting firm and a loss adjusting firm as expert consultants. The Panel directed the expert consultants to review each claim in the twelfth instalment in accordance with the verification and valuation methodology developed by the Panel. The Panel directed the expert consultants to submit to the Panel a detailed report for each claim summarizing the expert consultants' findings.

15. By its procedural order dated 1 August 2000, the Panel gave notice of its intention to complete its review of the twelfth instalment claims and submit its report and recommendations to the Governing Council within 180 days of 1 August 2000. This procedural order was transmitted to the Government of Iraq and the Government of Kuwait.

16. Pursuant to article 34 of the Rules, additional information and evidence was requested from the claimants in order to assist the Panel in its review of the claims. Claimants who were unable to submit the evidence requested were asked to provide reasons for their inability to comply with such requests. All requests for additional information and evidence were directed through the Government of Kuwait's Public Authority for Assessment of Compensation for Damages Resulting from Iraqi Aggression ("PAAC"). These requests were made in relation to the entire "E4" claims population and not just the twelfth instalment claims.

17. The requests for additional information and evidence are described in prior "E4" reports, e.g., paragraphs 21-26 of the "Report and recommendations made by the Panel of Commissioners concerning the second instalment of 'E4' claims" (S/AC.26/1999/17) (the "Second 'E4' Report") and paragraph 18 of the "Report and recommendations made by the Panel of Commissioners concerning the sixth instalment of 'E4' claims" (S/AC.26/2000/8) (the "Sixth 'E4' Report"). These requests are not restated in this report.

18. An additional level of verification was performed to determine if related claimants filed duplicate claims. This review is described in paragraph 18 of the "Report and recommendations made by the Panel of Commissioners concerning the fourth instalment of 'E4' claims" (S/AC.26/1999/18) (the "Fourth 'E4' Report").

19. During the Panel's review of claims in this instalment, the secretariat informed the Panel of the potential overlap between some claims in this instalment and certain individual claims for business losses filed before the Commission. This issue has been identified and reported to the Governing Council, in connection with the initial review of business loss claims filed by category "D" claimants, in report no. 30, dated 17 February 2000, submitted by the Executive Secretary of the Commission in accordance with article 16 of the Rules.

20. At the Panel's request, the secretariat conducted a review of the Claims Database and identified 19 claims in this instalment of "E4" claims, which present a potential for overlap with other claims filed by individuals for business losses before the Commission. These 19 "E4" claims have been listed in annex III to this report.

21. The Panel considers that additional time is required to determine the nature and extent of the overlap between these "E4" claims and the potentially overlapping individual claims for business losses. At this stage, to allow time for the additional claim development and review required, the Panel has recommended that the claims listed in annex III be deferred to a later instalment of category "E4" claims. Therefore, the Panel has made no findings concerning the claims listed in annex III to this report. In this report, subsequent references to the twelfth instalment claims are to the remaining 121 claims listed in annex I.

22. Based on its review of the documents submitted and the additional information obtained, the Panel concluded that the issues presented by the twelfth instalment claims had been adequately developed and that oral proceedings were not required to assist with the Panel's review of the claims.

## III. LEGAL FRAMEWORK AND VERIFICATION AND VALUATION METHODOLOGY

23. The legal framework and the verification and valuation methodology applied to the evaluation of the claims in this instalment is the same as that used in earlier "E4" instalments. This framework and methodology are discussed in paragraphs 25-62 of the First "E4" Report. Subsequent "E4" reports discuss additional legal and verification and valuation issues that were encountered in later instalments of "E4" claims. These various elements of the Panel's review are not restated in this report. Instead this report refers to sections in the previous "E4" reports where such issues have been addressed.

24. Where the Panel encountered new issues not addressed in prior "E4" reports, the Panel developed methodologies for verifying and valuing the losses. These new issues are discussed in the text of this report. The Panel's specific recommendations on the losses asserted in this instalment and the Panel's reasons for those recommendations are set out in the annexes to this report.

25. Before discussing the Panel's specific recommendations for compensating the twelfth instalment claims, it is important to restate that the Panel's approach to the verification and valuation of these claims balances the claimant's inability always to provide best evidence against the "risk of overstatement" introduced by shortcomings in evidence. In this context, the term "risk of overstatement", defined in paragraph 34 of the First "E4"

Report, is used to refer to cases in which claims contain evidentiary shortcomings that prevent their precise quantification and therefore present a risk that they might be overstated.

## IV. THE CLAIMS

26. The Panel reviewed the claims according to the nature and type of loss identified. Therefore, the Panel's recommendations are set out by loss type. Reclassified losses have been dealt with in the section pertaining to the loss types into which the Panel reclassified the losses.

### A. Contract

27. Three claimants in the present instalment asserted loss of contract claims aggregating KWD 485,158 (approximately USD 1,678,747). Claims for loss of contract in this instalment do not relate to contracts with the Government of Iraq or to contracts requiring performance in Iraq.

28. The claims for loss of contract in this instalment did not raise any new legal or verification and valuation issues. The Panel's approach to the compensability of contract losses is stated in prior "E4" reports and the verification and valuation methodology adopted by the Panel for the loss of contract claims is discussed in paragraphs 77-84 of the First "E4" Report.

29. The Panel's recommendations on contract losses are summarized in annex II.

### B. Real property

30. Fifteen claimants in this instalment filed claims aggregating KWD 602,734 (approximately USD 2,085,585) for loss of real property. These claims sought compensation for damage to a number of owned and rented premises in Kuwait.

31. The claims for loss of real property in this instalment did not raise any new legal or verification and valuation issues. The compensability standards and the verification and valuation methodology adopted by the Panel for loss of real property claims are stated in paragraphs 89-101 of the First "E4" Report.

32. Claimants in this instalment submitted the same type of evidence encountered by the Panel in earlier "E4" instalments, when reviewing loss of real property claims. This evidence is described in paragraphs 48-50 of the Second "E4" Report.

33. The Panel's recommendations on real property losses are summarized in annex II.

## C. Tangible property, stock, cash and vehicles

34. Tangible property losses are claimed by a majority of the twelfth instalment claimants. The claimed losses, relating to stock, furniture and fixtures, equipment, vehicles and cash, aggregate KWD 21,676,080 (approximately USD 75,003,737).

35. With regard to the compensability and the verification and valuation of these tangible property claims, the Panel applied the approach set out in paragraphs 108-135 of the First "E4" Report.

36. The claims for loss of tangible property in this instalment did not raise any new legal or verification and valuation issues. Claimants in this instalment submitted the same type of evidence encountered by the Panel in earlier "E4" instalments, when reviewing loss of tangible property claims. This evidence is described in paragraphs 55-56 of the Second "E4" Report.

37. For most claimants the existence, ownership and value of stocks lost were supported by copies of their audited accounts, original inventory purchase invoices and "roll-forward" calculations, as defined in paragraph 119 of the First "E4" Report. A few claimants sought to rely mainly on employee or related party witness statements to establish the fact of loss of stock. Where the fact of loss of stock was not supported by sufficient evidence, such as the showing of extraordinary losses in the claimant's audited post-liberation financial statements, the Panel has recommended no compensation for such losses.

38. Moh'd Al-Fadaghi Trading and General Contracting Company sought compensation for loss of stock. The claimant submitted audited accounts for financial periods from January 1987 to August 1990. On its claim form, submitted in 1995, the claimant stated that it resumed its business after the end of Iraq's invasion and occupation of Kuwait. In its statement of claim the claimant reiterated that it resumed business on 1 June 1991, employing 20 people. In response to a request for financial statements for the periods after it resumed operations, the claimant simply stated that it did not resume operations, without explaining the apparent inconsistency. The claimant did not provide any financial records to support the amount of stock lost or found after Iraq's invasion and occupation of Kuwait. The witness statements provided by the claimant did not detail the value of the stock loss claimed. In view of the above, the Panel concluded that the claimant had not submitted sufficient evidence to demonstrate the circumstances and amount of the claimed loss. The Panel has therefore recommended no compensation for this claim.

39. As was the case in prior "E4" instalments, claims for loss of goods in transit mainly concerned goods that were in Kuwait on the day of Iraq's invasion and that were subsequently lost. Successful claimants were able to

submit sufficient proof of payment for the goods and establish the ownership, existence and loss of the goods from certificates issued by the Kuwaiti port authorities or shipping agents.

40. The claims for loss of cash in this instalment did not raise any new legal or verification and valuation issues. Many claimants seeking compensation for cash losses sought to rely on witness statements from related parties without providing further evidence to substantiate their claims. Where claims for cash losses were not supported by sufficient contemporaneous evidence, establishing the possession and amount of cash held on 2 August 1990, the Panel has recommended no compensation.

41. The claims for loss of vehicles in this instalment did not raise any new legal or verification and valuation issues. Most claimants with loss of vehicle claims were able to establish their losses by submitting copies of deregistration certificates and additional documents such as post-liberation audited accounts and witness statements that substantiated the fact and circumstances of their loss.

42. The Panel's recommendations on tangible property, stock, cash and vehicle losses are summarized in annex II.

## D. Payment or relief to others

43. Two claimants in this instalment submitted claims for payment or relief to others aggregating KWD 20,043 (approximately USD 69,353).

44. The claims for payment or relief to others in this instalment did not raise any new legal or verification and valuation issues. When reviewing these claims for payment or relief to others, the Panel applied the approach and verification and valuation methodology described in earlier "E4" reports, such as in paragraphs 70-74 of the Second "E4" Report.

45. The Panel's recommendations on the payment or relief to others claims are summarized in annex II.

## E. Loss of profits

46. Nearly 85 per cent of the claimants in this instalment submitted claims for loss of profits aggregating KWD 8,163,811 (approximately USD 28,248,481).

47. Four significant legal and factual issues raised in the first instalment claims were also relevant to the claims in this instalment. These relate to the impact and assessment of (i) benefits received under the Government of Kuwait's post-liberation debt settlement programme, (ii) windfall or exceptional profits earned by claimants in the period immediately following the liberation of Kuwait, (iii) the indemnity period for loss of profits

claims, and (iv) claims for loss of profits selectively based on profitable lines of business. The conclusions reached by the Panel in relation to these issues are set forth in paragraphs 161-193 of the First "E4" Report. The Panel has applied these conclusions in its considerations and recommendations for the loss of profits claims in this instalment.

48. Despite specific requests, some claimants in the twelfth instalment did not provide annual accounts for the three financial years preceding and following the period of Iraq's invasion and occupation of Kuwait. The Panel noted that in some cases the failure to submit some accounts was sufficiently explained; for example, where the claimant had commenced trading in the period between 1987 and 1990 or where the claimant had ceased trading following Iraq's invasion and occupation of Kuwait.

49. Loss of profits claims by businesses that failed to provide a full set of annual audited accounts for the relevant periods were regarded as presenting a "risk of overstatement", unless the failure to submit the accounts was sufficiently explained.

50. The verification and valuation methodology adopted by the Panel for loss of profits claims is stated in paragraphs 194-202 of the First "E4" Report.

51. Kuwait Collection Company was a debt collection agency before Iraq's invasion of Kuwait. It asserted a loss of contract claim that the Panel reclassified to loss of profits as it concerned income from debt collection contracts. The claimant earned commissions on a portfolio of outstanding debt when it collected the debt. The claimant stated that because of Iraq's invasion and occupation of Kuwait it was unable to collect the debt and earn its commission.

52. The Panel noted that the claimant's earnings were contingent on debt collection. The claimant received no retainer and had no guaranteed income stream. A review of the claimant's financial statements indicated that the claimant experienced falling revenues and aggregate losses prior to Iraq's invasion of Kuwait. The Panel also reviewed whether the underlying debt had become uncollectible as a direct result of Iraq's invasion and occupation of Kuwait. A review of the collection contracts indicated that both the collection contracts and the underlying debts were very old, indicating that the debts had become uncollectible before Iraq's invasion of Kuwait. As the claimant did not demonstrate any historical profitability, and as the underlying debts had not become uncollectible as a direct result of Iraq's invasion and occupation of Kuwait, the Panel has recommended no compensation for this claim.

53. International Contracting Co. - S.A.K. submitted a claim for loss of net income on a construction contract that was being carried out by the claimant before Iraq's invasion of Kuwait. The Panel reclassified this claim to loss

of profits. On reviewing the claimant's financial statements, the Panel noted that a significant part of the claimant's income was attributable to earnings on bank deposits and foreign investments. The claimant's financial statements indicated that these earnings were distinct from the claimant's main business and were not affected by Iraq's invasion and occupation of Kuwait. The Panel therefore excluded these earnings when reviewing the claimant's historical profitability. Net income computed excluding interest and investment earnings indicated that the claimant's affected business incurred losses prior to 2 August 1990. As the claimant's financial statements did not establish historical profitability for the affected operations, the Panel has recommended no compensation for this loss of profits claim.

54. The Panel's recommendations on loss of profits claims are summarized in annex II.

## F. Receivables

55. Ten claimants in this instalment submitted claims for "bad debts" aggregating KWD 603,982 (approximately USD 2,089,903). Most of these claims were for amounts owed by businesses or individuals located in Kuwait prior to Iraq's invasion.

56. The claims for loss of receivables in this instalment did not raise any new legal or verification and valuation issues. As was the case in previous instalments of "E4" claims, most claimants sought compensation for debts that remained uncollected because debtors had not returned to Kuwait after liberation. The Panel reiterates its determination on this matter as set out in paragraphs 209-210 of the First "E4" Report. Claims for debts that have become uncollectible as a result of Iraq's invasion and occupation of Kuwait must demonstrate, by documentary or other appropriate evidence, the nature and amount of debt in question and the circumstances that caused the debt to become uncollectible.

57. The twelfth instalment claims for uncollectible receivables were verified and valued in the manner described in paragraphs 211-215 of the First "E4" Report.

58. As discussed above, the Panel recommends no compensation for claims that relied on the mere assertion that uncollected debts were ipso facto uncollectible because the debtors did not return to Kuwait. Most claimants failed to provide evidence to demonstrate that their debtors' inability to pay was a direct result of Iraq's invasion and occupation of Kuwait. This shortcoming was brought to the attention of the claimants, in the context of the additional information requested from claimants (see para. 17 above). While a number of responses were received from claimants few satisfied the above criteria.

59. The Panel's recommendations on claims for receivables are summarized in annex II.

## G. Restart costs

60. Eight claimants in this instalment submitted claims for restart costs aggregating KWD 562,961 (approximately USD 1,947,962). The amounts claimed as restart costs have been reviewed using the methodology described in paragraphs 221-223 of the First "E4" Report and paragraphs 93-96 of the Second "E4" Report.

61. Al-Julaiah Trading & Contracting submitted a claim for costs incurred in relation to a shipment of pipes. Based on the evidence submitted, the Panel determined the following.

62. In March 1990, the claimant, a Kuwaiti trading agent, opened letters of credit for the purchase of pipes from a seller in the United States of America. These pipes had been ordered by the Kuwait Oil Company ("KOC"). The pipes were shipped from the United States on 22 July 1990. On 27 July 1990, the seller presented the shipping documents to the New York branch of the National Bank of Kuwait ("NBK"). NBK accepted the documents but before payment was effected Iraq invaded Kuwait. At the same time, the goods could not be delivered to Kuwait and the ship returned to a port in the United States. The goods were then seized and stored by customs authorities in the United States.

63. In June 1991, NBK contested its liability to make payments to the seller for the pipes on grounds of force majeure. The United States courts, when apprised of the matter, held in favour of the seller, stating that the seller was entitled to payment on valid presentation of the documents. The courts directed NBK to pay the seller the value of goods plus interest. In separate proceedings, the United States courts also required NBK to pay to the United States customs authorities and the shipping agent costs for unloading, storing and maintaining the pipes in the United States.

64. NBK deducted all these payments from the claimant's bank account (i.e., the cost of the pipes, the interest and the customs and shipping charges). In the meantime, between 1991 and 1993, the claimant entered into discussions with KOC regarding this shipment. KOC originally took the view that its purchase order was cancelled on 2 August 1990 as a result of force majeure. In June 1993, KOC agreed to purchase the pipes. However, KOC stated that it would only pay the cost of the pipes and additional inspection fees related to checking the condition of the pipes. As a result, the claimant bore the costs relating to interest and the customs and shipping charges. The claimant seeks compensation for these costs. The issue raised is whether these costs are a direct result of Iraq's invasion and occupation of Kuwait.

65. The Panel finds that the interest costs were incurred as a result of NBK's refusal to pay the amounts when they fell due. This resulted from an independent business decision by NBK to contest payment and the interest costs were therefore not a direct result of Iraq's invasion and occupation of Kuwait. The Panel has therefore recommended no compensation for the interest costs.

66. However, the Panel finds that the losses represented by amounts paid to United States customs authorities and the shipping agent were incurred when the ship returned to the United States, which event was a direct result of Iraq's invasion of Kuwait. The Panel has therefore recommended compensation for these amounts. The Panel has adjusted some of the amounts claimed for these customs and shipping charges because of evidentiary shortcomings noted in the documents submitted and because some of the costs (e.g., costs for unloading the goods in Kuwait) were not incremental to the original shipping transaction.

67. The Panel's recommendations on restart costs are summarized in annex II.

## H. Other losses

68. Eleven claimants in this instalment submitted claims for other losses aggregating KWD 383,241 (approximately USD 1,326,093).

69. One claimant, Al A'mara Construction Materials & Contracting Abdul Majeed Zalzalah & Partner W.L.L., stated that before Iraq's invasion of Kuwait it paid a sum as goodwill or "key money" to obtain certain leased premises in Kuwait. The claimant stated that because of Iraq's invasion and occupation of Kuwait, its business activities ceased until 1993 and it gave up its lease. The claimant seeks compensation for the "key money" paid. The claimant submitted a receipt showing payment of the "key money". The claimant's financial statements also showed the "key money" as an asset.

70. However, the evidence submitted indicated that after Iraq's invasion and occupation of Kuwait the claimant voluntarily returned the property to its landlord. The claimant argued that it did not recover the "key money" by assigning the lease because of unfavourable economic conditions prevailing in Kuwait. The claimant did not provide any evidence of attempts to recover the "key money" by assigning the lease. The claimant also did not provide any evidence suggesting that the leased premises were physically damaged in a manner that would have resulted in a loss in the value of the "key money" associated with the premises. Based on the above, the Panel concluded that while the claimant could have assigned the lease to recover the "key money" it made an independent business decision not to do so. Any loss suffered in relation to the "key money" was therefore the result of this independent business decision. As the loss was not a direct result of Iraq's invasion

and occupation of Kuwait, the Panel has recommended no compensation for this loss.

71. Another claimant, Burgan Kuwait Company for Used Cars, stated that it purchased a 50 per cent share in a Kuwaiti garage from a Jordanian individual one year before Iraq's invasion of Kuwait. The claimant submitted a contract to establish this purchase. The claimant stated that during Iraq's invasion and occupation of Kuwait, the Jordanian seller left Kuwait and did not return to Kuwait. The claimant also states that as the entire property was registered in the Jordanian's name, it lost the value of its investment when it purchased the property. The claimant did not explain why the property remained registered only in the seller's name one year after it had purchased 50 per cent of the property. The claimant did not provide any evidence to show it made efforts to recover its investment. The claimant also did not provide any information as to the present status of the property in Kuwait. Based on the above, the Panel concluded that the evidence submitted was not sufficient to demonstrate the circumstances and amount of the claimed loss. The Panel has therefore recommended no compensation for this claim.

72. Claims for "other losses" that have been dealt with in prior "E4" instalments were reviewed in the manner stated in earlier "E4" reports. (See, for example, the Second "E4" Report, para. 108 dealing with the treatment of prepaid expenses.)

73. The Panel's recommendations on other losses are summarized in annex II.

## V. OTHER ISSUES

### A. Applicable dates for currency exchange rate and interest

74. In relation to the applicable dates for currency exchange rate and interest, the Panel has adopted the approach discussed in paragraphs 226-233 of the First "E4" Report.

### B. Claim preparation costs

75. The Panel has been informed by the Executive Secretary of the Commission that the Governing Council intends to resolve the issue of claim preparation costs in the future. Accordingly, the Panel has made no recommendation with respect to compensation for claim preparation costs.

## VI. RECOMMENDED AWARDS

76. Based on the foregoing, the awards recommended by the Panel for claimants in the twelfth instalment of "E4" claims are set out in annex I to this report. The underlying principles behind the Panel's recommendations on claims in this instalment are summarized in annex II to this report. All sums have been rounded to the nearest KWD and therefore the amounts may vary from the amount stated on Form E by one KWD.

Geneva, 21 December 2000

(Signed) Robert R. Briner
Chairman

(Signed) Alan J. Cleary
Commissioner

(Signed) Lim Tian Huat
Commissioner

# Annex I

## Recommended awards for the twelfth instalment of "E4" claims

## Reported by UNSEQ and UNCC claim number and claimant name

| UNSEQ claim No. a/ | UNCC claim No. | Claimant's name | Amount claimed (KWD) | Net amount claimed (KWD) b/ | Amount recommended (KWD) | Amount recommended (USD) |
|---|---|---|---|---|---|---|
| E-00966 | 4004073 | Al Jandoul Bakery and Sweets Co. W.L.L. | 49,173 | 49,173 | 21,516 | 74,450 |
| E-00967 | 4004074 | Al Rashed and Nader Textiles Company | 267,391 | 237,936 | 178,097 | 616,236 |
| E-00968 | 4004075 | Al A'mara Construction Materials Contracting Abdulmajeed Zalazalah & Partners W.L.L. | 193,943 | 191,318 | 120,787 | 417,948 |
| E-00969 | 4004076 | Mubarak Fahed Al Salem Al Sabah Bros. Co. W.L.L. | 108,715 | 107,965 | 64,513 | 223,055 |
| E-00970 | 4004077 | Al-Watyah Jewellers Co. | 183,473 | 183,473 | 156,994 | 542,791 |
| E-00972 | 4004079 | Jassim M. Saleh & Sons Textile Co. | 61,209 | 61,209 | 55,037 | 190,414 |
| E-00973 | 4004080 | Asea Brown Boveri Electrical Co. | 342,902 | 342,902 | 205,464 | 709,311 |
| E-00974 | 4004081 | Greenline Co. | 2,704,384 | 2,701,884 | 1,674,620 | 5,793,709 |
| E-00975 | 4004082 | Naseebco Company - Ahmad Abdulmuhsen Al Sager & Khalid Abdulmuhsen Al Sager W.L.L. | 103,717 | 99,474 | 45,116 | 156,111 |
| E-00976 | 4004083 | Al Ansari & Bahasin Trading Company | 204,179 | 201,679 | 156,828 | 542,523 |
| E-00978 | 4004085 | Al Bukhari Bookshop Company | 194,301 | 192,301 | 142,137 | 491,824 |
| E-00979 | 4004086 | Al Muslim & Audai Company W.L.L. | 49,121 | 47,921 | 47,921 | 165,817 |
| E-00980 | 4004087 | Saba Jewellers Co. | 60,622 | 60,622 | 41,999 | 145,229 |
| E-00981 | 4004088 | International Timber Co. W.L.L. | 184,711 | 182,711 | 121,924 | 421,851 |
| E-00985 | 4004148 | Silver Watch for Electronic Requisites | 209,179 | 208,679 | 58,090 | 200,982 |
| E-00987 | 4004150 | Kuwait Collection Company | 115,932 | 115,932 | 0 | 0 |
| E-00988 | 4004151 | Nasser Abdulaziz Al-Rumaih General Trading Company W.L.L. | 373,913 | 372,413 | 286,227 | 990,405 |
| E-00990 | 4004153 | Attafani Trad. & Cont. Mechanical & Electrical Company | 79,839 | 78,039 | 49,503 | 171,271 |
| E-00991 | 4004154 | Al-Massab Trading Co. | 53,000 | 53,000 | 17,448 | 60,374 |
| E-00992 | 4004155 | Ahmad & Mahmood Al-Taher Co.- Mahmood Mohamed Taher Abdullah & Partners Limited Partnership Co. Kuwait | 338,008 | 336,858 | 107,619 | 371,998 |

| UNSEQ claim No. a/ | UNCC claim No. | Claimant's name | Amount claimed (KWD) | Net amount claimed (KWD) b/ | Amount recommended (KWD) | Amount recommended (USD) |
|---|---|---|---|---|---|---|
| E-00993 | 4004156 | Moubarak and Bayaah Trading Company | 89,787 | 79,362 | 35,504 | 122,823 |
| E-00994 | 4004157 | Bahman International Travel Company W.L.L. | 192,197 | 188,463 | 106,115 | 367,180 |
| E-00995 | 4004158 | Negma Transport Company | 37,900 | 37,000 | 22,302 | 77,170 |
| E-00996 | 4004116 | Al Rashed Shipping Agencies Co. W.L.L. | 229,275 | 212,887 | 115,011 | 397,716 |
| E-00998 | 4004118 | Al Awadey Electrical Lights Co. W.L.L. | 383,681 | 383,681 | 320,041 | 1,105,838 |
| E-00999 | 4004119 | Al Shammary Watches & Jewellery Co. | 613,393 | 610,893 | 608,110 | 2,104,187 |
| E-01000 | 4004120 | Moh'd Al-Fadaghi Trading and General Contracting Company | 525,982 | 469,258 | 5,447 | 18,828 |
| E-01001 | 4004121 | Abdul Mohsen Salem Al-Abdul Razzak & Co. | 901,690 | 897,625 | 518,846 | 1,793,825 |
| E-01002 | 4004122 | Al Mailam & Shaalan Co. W.L.L. | 52,533 | 51,033 | 32,441 | 112,253 |
| E-01003 | 4004123 | Kuwait & Muscat Trading Co. W.L.L. | 96,960 | 94,960 | 54,831 | 189,704 |
| E-01005 | 4004125 | Al-Qimmah Al-Baidha Sanitary Co. W.L.L. | 431,014 | 431,014 | 321,284 | 1,111,709 |
| E-01006 | 4004126 | Al-Taif General Trading & Cont. Co. | 99,022 | 99,022 | 78,229 | 270,689 |
| E-01007 | 4004127 | Brazilia Gen. Trd. & Cont. Co. W.L.L. | 618,714 | 618,714 | 130,006 | 449,848 |
| E-01008 | 4004128 | Al Tai for Trading & Contracting Company Faisal Saleh Shebeb & Partners T.B. | 272,291 | 270,291 | 135,294 | 468,041 |
| E-01009 | 4004129 | Al Ghanim and Darras Automotive and Equipments Co. W.L.L. | 152,293 | 128,079 | 97,132 | 336,097 |
| E-01010 | 4004130 | Industrial Construction & Trading Co. | 145,339 | 143,339 | 13,372 | 46,124 |
| E-01011 | 4004131 | Lalwa Al-Behar for Clothing Trading Co. Yousif Jamal Mohammed & Sons | 59,489 | 56,318 | 43,587 | 150,820 |
| E-01012 | 4004132 | Al Messila Travel Co. W.L.L. | 82,683 | 74,753 | 12,376 | 42,824 |
| E-01013 | 4004133 | Dar Al Hadaf Press Co. Ahmed Abdul Aziz Al Jar Allah & Co. W.L.L., Kuwait | 140,632 | 137,632 | 106,844 | 368,926 |
| E-01015 | 4004134 | Food Supply Company - Emad Abdul Rahman Farhan Al-Fareih | 81,837 | 77,982 | 39,852 | 137,874 |
| E-01016 | 4004135 | Sanam Company for Photography & Gifts and Artistic Production | 85,007 | 85,007 | 48,885 | 169,152 |
| E-01017 | 4004136 | Gulf Cleaning and Contracting Co. | 71,947 | 60,484 | 37,455 | 129,602 |
| E-01019 | 4004138 | Al-Nawras Furnishing and Office Equipments Company | 54,066 | 54,066 | 16,402 | 56,754 |

| UNSEQ claim No. a/ | UNCC claim No. | Claimant's name | Amount claimed (KWD) | Net amount claimed (KWD) b/ | Amount recommended (KWD) | Amount recommended (USD) |
|---|---|---|---|---|---|---|
| E-01020 | 4004139 | Al-Amal Trading and Contracting Company - Omer Shamlan Al-Hassawi & Partner | 206,307 | 205,066 | 90,812 | 314,228 |
| E-01021 | 4004140 | Hajy Mohamad Dehdary Co. & Sons. | 456,430 | 456,430 | 231,240 | 800,138 |
| E-01022 | 4004141 | Sohar Food Trading Co. W.L.L. | 92,613 | 77,952 | 46,684 | 161,536 |
| E-01023 | 4004142 | Al-Sayafee Trading and Marine Services Co. | 325,655 | 324,155 | 113,775 | 393,643 |
| E-01024 | 4004143 | Abdulghafoor & Mostafa Readymade Garments & Shoes Co. W.L.L. | 99,192 | 98,192 | 54,539 | 188,716 |
| E-01025 | 4004144 | Burgan Kuwait Company for Used Cars | 239,949 | 238,649 | 113,147 | 391,512 |
| E-01026 | 4004145 | Sagar Jewellers Co. | 94,600 | 94,600 | 22,608 | 78,105 |
| E-01027 | 4004090 | Al Sa'ada Taxi Company | 78,074 | 77,298 | 55,084 | 190,451 |
| E-01028 | 4004091 | Al-Awdi & Partners for Cons. Mater. & Cont. & Building Co. | 286,872 | 286,872 | 216,986 | 750,817 |
| E-01029 | 4004092 | Kuwait and Oman General Trading Co. W.L.L. | 309,925 | 309,147 | 135,117 | 467,519 |
| E-01030 | 4004093 | National Piling Company W.L.L | 724,420 | 718,120 | 433,533 | 1,500,114 |
| E-01031 | 4004094 | Al-Deek Al- Roumi Restaurant Company | 237,305 | 211,212 | 159,243 | 550,531 |
| E-01033 | 4004096 | Al Firoz Shoes Company | 241,883 | 215,315 | 166,153 | 574,880 |
| E-01035 | 4004098 | Mohammad Al-Dosary & Sons Co. | 43,617 | 43,617 | 35,683 | 123,471 |
| E-01036 | 4004099 | Kuwaiti-Bahraini Exchange Co. W.L.L. | 55,262 | 55,262 | 41,821 | 144,565 |
| E-01037 | 4004100 | Aziz Optician Co. (Salman & Makhany) | 42,827 | 42,127 | 22,199 | 76,752 |
| E-01038 | 4004101 | Oman Exchange Co. W.L.L. | 60,340 | 56,766 | 39,067 | 135,099 |
| E-01039 | 4004102 | Al Tanseek Trading & Cont. Co. W.L.L. | 265,553 | 263,103 | 99,195 | 343,172 |
| E-01040 | 4004103 | Warba Medical Supplies Co. | 202,343 | 200,843 | 144,501 | 499,395 |
| E-01041 | 4004104 | Al Jawad Trading & Contracting Co. | 82,182 | 81,732 | 58,868 | 203,576 |
| E-01042 | 4004105 | Middle East Group for Trading & Contracting Abdal Latif Abdulla Al Mehri & Partner Co. W.L.L. | 396,089 | 394,589 | 242,664 | 839,652 |
| E-01043 | 4004106 | Minefah General Trading & Cont. Co. Nouri & Faisal Abdel Aziz Al-Nouri | 244,440 | 237,140 | 143,138 | 495,287 |
| E-01044 | 4004107 | Al Najar & Al-Jallad Bicycles & Toys | 417,760 | 417,760 | 154,570 | 534,833 |
| E-01045 | 4004108 | Topaz Shoes Company | 49,312 | 43,743 | 16,712 | 57,827 |
| E-01046 | 4004109 | Exhibitions International Co. | 223,657 | 223,657 | 97,027 | 335,734 |

| UNSEQ claim No. a/ | UNCC claim No. | Claimant's name | Amount claimed (KWD) | Net amount claimed (KWD) b/ | Amount recommended (KWD) | Amount recommended (USD) |
|---|---|---|---|---|---|---|
| E-01047 | 4004110 | Mechanical Equipment Co. | 52,701 | 51,701 | 23,246 | 80,363 |
| E-01049 | 4004112 | Al Jabriah Co. for Consultation & Development W.L.L. | 57,348 | 55,848 | 26,352 | 91,001 |
| E-01051 | 4004114 | Faleh Al-Hajri & Sons for General Trading Contracting | 239,069 | 239,069 | 153,270 | 530,346 |
| E-01052 | 4004115 | Bader Al-Sumait & Bros. for General Trading & Contracting Co. W.L.L. | 339,800 | 335,361 | 219,705 | 759,069 |
| E-01053 | 4004161 | Fayez Al-Sahaeej Partners Company for Trading and Contracting | 46,328 | 44,828 | 35,801 | 123,800 |
| E-01054 | 4004162 | Al Arfaj Engineering Company W.L.L. | 162,841 | 145,790 | 66,786 | 230,363 |
| E-01055 | 4004163 | Kindah Fashion Corner Co. "Top Fashion" Presently | 126,905 | 126,405 | 64,500 | 222,952 |
| E-01056 | 4004164 | Bobiyan Auto Spare Parts Co./P.C. | 137,108 | 135,108 | 97,828 | 338,253 |
| E-01057 | 4004165 | Dalma General Trading and Contracting Company W.L.L. | 266,076 | 264,076 | 162,738 | 562,892 |
| E-01058 | 4004166 | Anwal Gold and Precious Metals Company Bader Al Rashood and Partners W.L.L. | 66,532 | 65,932 | 21,255 | 73,547 |
| E-01059 | 4004167 | Al Raed Security Co. | 64,507 | 57,177 | 48,264 | 166,933 |
| E-01060 | 4004168 | Golden Treasures Company W.L.L. | 417,232 | 416,032 | 273,881 | 946,609 |
| E-01061 | 4004169 | Al-Safare Central Market Co. | 88,317 | 88,317 | 44,635 | 154,446 |
| E-01062 | 4004170 | Fajr-Al Khaleeg Building Contracts Co. | 16,070 | 15,520 | 5,403 | 18,696 |
| E-01063 | 4004171 | Al Fatat Club | 51,201 | 50,551 | 45,938 | 158,845 |
| E-01064 | 4004172 | Abdul Aziz Abdulla & Sons Co. | 117,470 | 116,470 | 44,903 | 155,253 |
| E-01065 | 4004173 | Al Mushkat Trading Co. W.L.L. | 83,745 | 81,245 | 27,081 | 93,706 |
| E-01066 | 4004174 | Aluminium Industries Company W.L.L. | 259,099 | 256,349 | 141,261 | 488,792 |
| E-01067 | 4004175 | Abud Al Razzaq Al Qaddumi & Sons Co. for General Contracting and Trade | 100,834 | 100,834 | 31,166 | 107,841 |
| E-01068 | 4004176 | Al Barh General Trading and Contracts | 75,580 | 73,030 | 45,443 | 157,242 |
| E-01069 | 4004177 | Al-Julaiah Trading & Contracting | 884,497 | 882,497 | 484,472 | 1,676,374 |
| E-01071 | 4004179 | Mubarak Al Azmi Ready Wear Co. | 15,000 | 15,000 | 3,000 | 10,381 |
| E-01074 | 4004192 | Union Al Jazira Co. | 219,989 | 217,989 | 120,707 | 417,650 |
| E-01076 | 4004194 | Hussin and Bahrami Contracting Co. | 77,361 | 76,261 | 39,985 | 138,210 |
| E-01077 | 4004195 | Al Asmar Food Co. | 96,905 | 96,160 | 17,263 | 59,655 |
| E-01078 | 4004196 | Naif Hamad Al Dabous & Sons Co. W.L.L. | 2,056,154 | 2,049,154 | 356,273 | 1,232,779 |

| UNSEQ claim No. a/ | UNCC claim No. | Claimant's name | Amount claimed (KWD) | Net amount claimed (KWD) b/ | Amount recommended (KWD) | Amount recommended (USD) |
|---|---|---|---|---|---|---|
| E-01079 | 4004197 | Essa M. Baloushi Sons Company for Building Material & Wood | 117,647 | 115,647 | 31,783 | 109,628 |
| E-01080 | 4004198 | Kuwaiti Afgani Co. for Cars Spare Parts. | 183,072 | 183,072 | 116,975 | 404,704 |
| E-01081 | 4004199 | Carpentry Art and Decoration Design Company Abdul Aziz Abdul Kader Al-Rashid & Partner | 94,140 | 91,783 | 51,321 | 177,581 |
| E-01082 | 4004200 | Saada and Sherani Jewellery Company W.L.L. | 262,136 | 262,136 | 133,760 | 462,648 |
| E-01083 | 4004201 | Jassim Abdulwahab and Partner Co. W.L.L. | 192,848 | 192,848 | 143,341 | 795,726 |
| E-01084 | 4004202 | Al Attia & Al Khawajah Trading Company | 80,054 | 80,054 | 12,714 | 43,883 |
| E-01086 | 4004181 | Kuwait Wood Industries | 880,064 | 877,104 | 313,095 | 1,083,374 |
| E-01088 | 4004183 | Artistic Interior Design Center W.L.L. | 59,877 | 59,189 | 10,687 | 36,979 |
| E-01089 | 4004184 | Arab European Aluminium Company | 128,735 | 127,735 | 61,881 | 214,072 |
| E-01091 | 4004186 | Abdulrahman M. Al-Zamil and Saleh A. Al-Abdali Trading Co. - Partnership | 98,669 | 98,608 | 0 | 0 |
| E-01092 | 4004187 | Kuwait Maritime & Mercantile Co. K.S.C. | 222,617 | 220,817 | 86,475 | 299,122 |
| E-01093 | 4004188 | Reem Al Khaleeg Perfumes & Cosmetics Co. Ltd. | 571,006 | 568,476 | 355,590 | 1,229,778 |
| E-01094 | 4004189 | Al-Jadeer Trading Company W.L.L. | 230,267 | 228,767 | 139,784 | 483,682 |
| E-01095 | 4004190 | Kuwait Shipping Agencies Company K.S.C. (Closed) | 270,969 | 267,843 | 156,500 | 540,961 |
| E-01096 | 4004203 | Al Fayha General Contracting Co. | 1,068,363 | 952,951 | 665,107 | 2,300,718 |
| E-01097 | 4004204 | International Contracting Company - S.A.K. | 612,425 | 606,425 | 289,058 | 1,000,201 |
| E-01098 | 4004205 | Beyader Construction Company | 735,526 | 732,776 | 164,459 | 569,062 |
| E-01099 | 4004206 | Ratqa General Trading & Contracting Co. W.L.L. | 622,647 | 619,897 | 383,835 | 1,326,747 |
| E-01100 | 4004207 | Al Artica Trading Co. | 44,169 | 43,819 | 13,708 | 47,421 |
| E-0110[illegible] | 4004208 | Salem & Bader Paints Company W.L.L. | 205,225 | 205,225 | 119,211 | 412,495 |
| E-01103 | 4004210 | Mzinco Co. for General Enterprises W.L.L. | 71,131 | 71,131 | 50,478 | 174,626 |
| E-01104 | 4004211 | Al Ferdous Pharmacy Company | 107,450 | 106,831 | 14,460 | 49,970 |
| E-01105 | 4004212 | Kuwait Controls Company | 605,871 | 605,871 | 235,742 | 814,530 |
| E-01106 | 4004213 | Al Mia & Nori Co. Import & Export | 196,523 | 195,723 | 172,661 | 596,784 |
| E-01107 | 4004214 | Al Bulooshi & Kafashaan Co. W.L.L. | 277,675 | 277,675 | 199,926 | 691,785 |
| E-01108 | 4004215 | National Computer Services Co. | 1,781,393 | 1,646,197 | 318,253 | 1,101,221 |

| UNSEQ claim No. a/ | UNCC claim No. | Claimant's name | Amount claimed (KWD) | Net amount claimed (KWD) b/ | Amount recommended (KWD) | Amount recommended (USD) |
|---|---|---|---|---|---|---|
| E-01110 | 4004217 | Al Ahlia Plastic Co. W.L.L. | 646,779 | 542,007 | 167,733 | 580,391 |
| TOTAL | | | 33,257,998 | 32,498,010 | 16,395,265 | 56,709,793 |

a/ The UNSEQ number is the provisional claim number assigned to each claim by PAAC.

b/ The "Net amount claimed" is the original amount claimed less the amounts claimed for claim preparation costs and interest. As set forth in paragraphs 74 and 75 of the report, the Panel has made no recommendation with regard to these items.

## Annex II

### Recommended awards for twelfth instalment of "E4" claims

### Reported by claimant name and category of loss

Claimant's name: Al Jandoul Bakery and Sweets Co. W.L.L.
UNCC claim number: 4004073
UNSEQ number: E-00966

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 12,413 | 9,930 | Original loss of tangible property claim reclassified as loss of tangible property and loss of stock. Tangible property claim adjusted for failure to repair/replace. See paragraphs 35-36 of the report. |
| Loss of stock | 24,360 | 2,286 | Claim adjusted for stock build-up and obsolescence. See paragraphs 35 and 37-39 of the report. |
| Loss of profits | 12,400 | 9,300 | Claim adjusted for evidentiary shortcomings. See paragraphs 47-50 of the report. |
| TOTAL | 49,173 | 21,516 | |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Al Rashed and Nader Textiles Company |
| UNCC claim number: | 4004074 |
| UNSEQ number: | E-00967 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 225,136 | 173,608 | Original loss of tangible property claim reclassified as loss of stock. Stock claim adjusted for stock build-up and obsolescence. See paragraphs 35 and 37-39 of the report. |
| Loss of profits | 12,800 | 4,489 | Claim adjusted to reflect historical results, for evidentiary shortcomings and for windfall profits. See paragraphs 47-50 of the report. |
| TOTAL | 237,936 | 178,097 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 1,200 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |
| Interest | 28,255 | n.a. | Governing Council's determination pending. See paragraph 74 of the report. |

## Annex II

### Recommended awards for twelfth instalment of "E4" claims

### Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Al A'mara Construction Materials & Contracting Abdul Majeed Zalzalah & Partner W.L.L. |
| UNCC claim number: | 4004075 |
| UNSEQ number: | E-00968 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 7,479 | 5,150 | Original loss of tangible property claim reclassified as loss of tangible property and loss of stock. Tangible property claim adjusted for depreciation and failure to repair/replace. See paragraphs 35-36 of the report. |
| Loss of stock | 162,344 | 113,130 | Claim adjusted for stock build-up, obsolescence and evidentiary shortcomings. See paragraphs 35 and 37-39 of the report. |
| Loss of profits | 8,895 | 2,507 | Claim adjusted to reflect historical results. See paragraphs 47-50 of the report. |
| Other loss not categorised | 12,600 | 0 | Insufficient evidence to substantiate claim. See paragraphs 69-70 of the Panel report. |
| TOTAL | 191,318 | 120,787 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 2,625 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Mubarak Fahed Al Salem Al Sabah Bros. Co. W.L.L.
UNCC claim number: 4004076
UNSEQ number: E-00969

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 2,310 | 2,310 | Original loss of tangible property claim reclassified as loss of tangible property, loss of stock and loss of vehicles. Recommend awarding tangible property claim in full. See paragraphs 35-36 of the report. |
| Loss of stock | 68,500 | 35,285 | Stock claim adjusted for stock build-up and obsolescence. Goods in transit claim adjusted for obsolescence. See paragraphs 35 and 37-39 of the report. |
| Loss of vehicles | 13,300 | 11,080 | Claim adjusted to reflect M.V.V. Table values. See paragraphs 35 and 41 of the report. |
| Loss of profits | 23,855 | 15,838 | Original loss of income-producing property claim reclassified as loss of profits. Claim adjusted to reflect historical results, to reduce indemnity period to 12 months and for windfall profits. See paragraphs 47-50 of the report. |
| TOTAL | 107,965 | 64,513 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 750 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

### Recommended awards for twelfth instalment of "E4" claims

### Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Al-Watyah Jewellers Co. |
| UNCC claim number: | 4004077 |
| UNSEQ number: | E-00970 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 126,870 | 106,297 | Original loss of tangible property claim reclassified as loss of stock. Stock claim adjusted for stock build-up. See paragraphs 35 and 37-39 of the report. |
| Loss of profits | 56,603 | 50,697 | Claim adjusted to reflect historical results. See paragraphs 47-50 of the report. |
| TOTAL | 183,473 | 156,994 | |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Jassim M. Saleh & Sons Textile Co.
UNCC claim number: 4004079
UNSEQ number: E-00972

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 57,959 | 52,695 | Original loss of tangible property claim reclassified as loss of stock. Stock claim adjusted for evidentiary shortcomings and obsolescence. See paragraphs 35 and 37-39 of the report. |
| Loss of profits | 3,250 | 2,342 | Claim adjusted to reflect historical results, to restrict indemnity period to 12 months and for windfall profits. See paragraphs 47-50 of the report. |
| TOTAL | 61,209 | 55,037 | |

## Annex II

### Recommended awards for twelfth instalment of "E4" claims

### Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Asea Brown Boveri Electrical Co. |
| UNCC claim number: | 4004080 |
| UNSEQ number: | E-00973 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 119,021 | 46,272 | Original tangible and income-producing property claims reclassified as loss of tangible property and loss of vehicles. Tangible property claim adjusted for depreciation and evidentiary shortcomings. See paragraphs 35-36 of the report. |
| Loss of vehicles | 26,764 | 9,545 | Claim adjusted for evidentiary shortcomings and to reflect M.V.V. Table values. See paragraphs 35 and 41 of the report. |
| Loss of profits | 197,117 | 149,647 | Claim adjusted to reflect historical results. See paragraphs 47-50 of the report. |
| TOTAL | 342,902 | 205,464 | |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Greenline Co. |
| UNCC claim number: | 4004081 |
| UNSEQ number: | E-00974 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---:|---:|---|
| Loss of tangible property | 1,159,119 | 1,021,420 | Original tangible and real property claims reclassified as loss of tangible property, stock, cash and vehicles. Tangible property claim adjusted for maintenance, depreciation and evidentiary shortcomings. See paragraphs 35-36 of the report. |
| Loss of stock | 709,910 | 208,718 | Claim adjusted for stock build-up, obsolescence and evidentiary shortcomings. See paragraphs 35 and 37-39 of the report. |
| Loss of cash | 30,876 | 30,876 | Recommend awarding claim in full. See paragraph 35 and 40 of the report. |
| Loss of vehicles | 388,611 | 258,711 | Claim adjusted for evidentiary shortcomings and to reflect the M.V.V. Table values. Vehicle repairs claim adjusted for maintenance. See paragraphs 35 and 41 of the report. |
| Loss of profits | 105,947 | 75,315 | Claim adjusted to reflect historical results, to restrict indemnity period to 12 months and for windfall profits. See paragraphs 47-50 of the report. |
| Bad debts | 269,156 | 63,620 | Claim adjusted for evidentiary shortcomings. See paragraphs 56-58 of the report. |
| Other loss not categorised | 38,265 | 15,960 | Original contracts claim reclassified to other loss not categorised. Claim for cancellation penalties recommended in full. Insufficient evidence to substantiate remaining claim. See paragraph 72 of the report. |
| TOTAL | 2,701,884 | 1,674,620 | |

| | | | |
|---|---:|---:|---|
| Claim preparation costs | 2,500 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

# Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Naseebco Company - Ahmad Abdulmuhsen Al Sager & Khalid Abdulmuhsen Al Sager W.L.L.
UNCC claim number: 4004082
UNSEQ number: E-00975

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 99,474 | 45,116 | Original loss of tangible property claim reclassified as loss of stock. Stock claim adjusted for evidentiary shortcomings. See paragraphs 35 and 37-39 of the report. |
| TOTAL | 99,474 | 45,116 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 4,243 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

## Recommended awards for twelfth instalment of 'E4' claims

## Reported by claimant name and category of loss

Claimant's name: Al Ansari & Bahasin Trading Company
UNCC claim number: 4004083
UNSEQ number: E-00976

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 829 | 829 | Original loss of tangible property claim reclassified as loss of tangible property and loss of stock. Recommend awarding tangible property claim in full. See paragraphs 35-36 of the report. |
| Loss of stock | 179,646 | 143,717 | Claim adjusted for obsolescence. See paragraphs 35 and 37-39 of the report. |
| Loss of profits | 21,204 | 12,282 | Claim adjusted to reflect historical results and for windfall profits. See paragraphs 47-50 of the report. |
| TOTAL | 201,679 | 156,828 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 2,500 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Al Bukhari Bookshop Company
UNCC claim number: 4004085
UNSEQ number: E-00978

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 9,643 | 4,696 | Original loss of tangible property claim reclassified as loss of tangible property and loss of stock. Tangible property claim adjusted for depreciation and evidentiary shortcomings. See paragraphs 35-36 of the report. |
| Loss of stock | 115,751 | 91,597 | Claim adjusted for stock build-up and obsolescence. See paragraphs 35 and 37-39 of the report. |
| Loss of profits | 66,907 | 45,844 | Claim adjusted to reflect historical results and for evidentiary shortcomings. See paragraphs 47-50 of the report. |
| TOTAL | 192,301 | 142,137 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 2,000 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Al Muslim & Audai Company W.L.L. |
| UNCC claim number: | 4004086 |
| UNSEQ number: | E-00979 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 47,921 | 47,921 | Recommend awarding claim in full. See paragraphs 35-36 of the report. |
| TOTAL | 47,921 | 47,921 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 1,200 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Saba Jewellers Co.
UNCC claim number: 4004807
UNSEQ number: E-00980

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 12,014 | 9,362 | Original loss of tangible property claim reclassified as loss of tangible property, loss of stock and loss of cash. Tangible property claim adjusted for depreciation and failure to repair/replace. See paragraphs 35-36 of the report. |
| Loss of stock | 31,337 | 21,216 | Claim adjusted for evidentiary shortcomings and historical obsolescence. See paragraphs 35 and 37-39 of the report. |
| Loss of cash | 2,646 | 2,646 | Recommend awarding claim in full. See paragraphs 35 and 40 of the report. |
| Loss of profits | 14,625 | 8,775 | Claim adjusted to reflect historical results, to restrict the indemnity period to 12 months and for evidentiary shortcomings. See paragraphs 47-50 of the report. |
| TOTAL | 60,622 | 41,999 | |

## Annex II

### Recommended awards for twelfth instalment of "E4" claims

### Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | International Timber Co. W.L.L. |
| UNCC claim number: | 4004088 |
| UNSEQ number: | E-00981 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---:|---:|---|
| Loss of stock | 170,435 | 119,092 | Original loss of tangible property claim reclassified as loss of stock. Stock claim adjusted for stock build-up and obsolescence. See paragraphs 35 and 37-39 of the report. |
| Loss of profits | 12,276 | 2,832 | Claim adjusted to reflect historical results and for windfall profits. See paragraphs 47-50 of the report. |
| TOTAL | 182,711 | 121,924 | |

| | | | |
|---|---:|---:|---|
| Claim preparation costs | 2,000 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Silver Watch for Electronic Requisites |
| UNCC claim number: | 4004148 |
| UNSEQ number: | E-00985 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 20,121 | 20,121 | Original loss of tangible property claim reclassified as loss of tangible property and loss of stock. Recommend awarding tangible property claim in full. See paragraphs 35-36 of the report. |
| Loss of stock | 182,425 | 36,020 | Claim adjusted for stock build-up and obsolescence. See paragraphs 35 and 37-39 of the report. |
| Loss of profits | 6,133 | 1,949 | Claim adjusted to reflect historical results and for evidentiary shortcomings and windfall profits. See paragraphs 47-50 of the report. |
| TOTAL | 208,679 | 58,090 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 500 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Kuwait Collection Company |
| UNCC claim number: | 4004150 |
| UNSEQ number: | E-00987 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of profits | 115,932 | 0 | See paragraphs 47-52 of the report. |
| TOTAL | 115,932 | 0 | |

## Annex II

### Recommended awards for twelfth instalment of "E4" claims

### Reported by claimant name and category of loss

Claimant's name: Nasser Abdulaziz Al-Rumaih General Trading Company W.L.L.
UNCC claim number: 4004151
UNSEQ number: E-00988

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 2,800 | 2,240 | Original loss of tangible property claim reclassified as loss of tangible property and loss of stock. Tangible property claim adjusted for failure to repair/replace. See paragraphs 35-36 of the report. |
| Loss of stock | 369,613 | 283,987 | Stock claim adjusted for obsolescence and evidentiary shortcomings. Goods in transit claim adjusted for obsolescence. See paragraphs 35 and 37-39 of the report. |
| TOTAL | 372,413 | 286,227 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 1,500 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Attafani Trad. & Cont. Mechanical & Electrical Company
UNCC claim number: 4004153
UNSEQ number: E-00990

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 4,362 | 3,774 | Original loss of tangible property claim reclassified as loss of tangible property, loss of stock and loss of vehicles. Tangible property claim adjusted for failure to repair/replace. See paragraphs 35-36 of the report. |
| Loss of stock | 58,277 | 37,544 | Claim adjusted for obsolescence and evidentiary shortcomings. See paragraphs 35 and 37-39 of the report. |
| Loss of vehicles | 2,800 | 2,736 | Claim adjusted to reflect M.V.V. Table values. See paragraphs 35 and 41 of the report. |
| Loss of profits | 12,600 | 5,449 | Claim adjusted to reflect historical results, for evidentiary shortcomings and for windfall profits. See paragraphs 47-50 of the report. |
| TOTAL | 78,039 | 49,503 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 1,800 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Al-Massab Trading Co.
UNCC claim number: 4004154
UNSEQ number: E-00991

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of vehicles | 32,000 | 17,448 | Original tangible property claim reclassified as loss of vehicles. Claim adjusted to reflect M.V.V. Table values. See paragraphs 35 and 41 of the report. |
| Loss of profits | 21,000 | 0 | Insufficient evidence to substantiate claim. See paragraphs 47-50 of the report. |
| TOTAL | 53,000 | 17,448 | |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Ahmad & Mahmood Al-Taher Co. - Mahmood Mohamed Taher Abdullah & Partners Limited Partnership Co.
Kuwait

UNCC claim number: 404155

UNSEQ number: E-00992

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of profits | 331,138 | 107,619 | Claim adjusted to reflect historical results and for windfall profits. See paragraphs 47-50 of the report. |
| Other loss not categorised | 5,720 | 0 | Insufficient evidence to substantiate claim. See paragraph 72 of the report. |
| TOTAL | 336,858 | 107,619 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 1,150 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Moubarak and Bayaah Trading Company |
| UNCC claim number: | 4004156 |
| UNSEQ number: | E-00993 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 71,382 | 27,524 | Original loss of tangible property claim reclassified as loss of stock. Stock claim adjusted for obsolescence and evidentiary shortcomings. See paragraphs 35 and 37-39 of the report. |
| Loss of profits | 7,980 | 7,980 | Recommend awarding claim in full. See paragraphs 47-50 of the report. |
| TOTAL | 79,362 | 35,504 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 1,000 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |
| Interest | 9,425 | n.a. | Governing Council's determination pending. See paragraph 74 of the report. |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Bahman International Travel Company W.L.L.
UNCC claim number: 4004157
UNSEQ number: E-00994

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 26,453 | 19,105 | Original loss of tangible property claim reclassified as loss of tangible property and loss due to restart of business. Tangible property claim adjusted for depreciation and failure to repair/replace. See paragraphs 35-36 of the report. |
| Loss of profits | 23,800 | 0 | Original payment or relief to others claim reclassified as loss of profits. Profits claim adjusted to reflect historical results. See paragraphs 47-50 of the report. |
| Bad debts | 45,000 | 0 | Insufficient evidence to substantiate claim. See paragraphs 56-58 of the report. |
| Restart costs | 93,210 | 87,010 | Claim adjusted for evidentiary shortcomings and maintenance. See paragraph 60 of the report. |
| TOTAL | 188,463 | 106,115 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 3,734 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

### Recommended awards for twelfth instalment of "E4" claims

### Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Negma Transport Company |
| UNCC claim number: | 4004158 |
| UNSEQ number: | E-00995 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of vehicles | 37,000 | 22,302 | Original loss of tangible property claim reclassified as loss of vehicles. Vehicles claim adjusted to reflect M.V.V. Table values. See paragraphs 35 and 41 of the report. |
| TOTAL | 37,000 | 22,302 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 900 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Al Rashed Shipping Agencies Co. W.L.L. |
| UNCC claim number: | 4004116 |
| UNSEQ number: | E-00996 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 5,991 | 5,991 | Original loss of tangible property claim reclassified as loss of tangible property and loss of vehicles. Recommend awarding tangible property claim in full. See paragraphs 35-36 of the report. |
| Loss of vehicles | 10,600 | 9,530 | Claim adjusted to reflect M.V.V. Table values. See paragraphs 35 and 41 of the report. |
| Loss of profits | 150,403 | 68,440 | Claim adjusted to reflect historical results and to restrict indemnity period to 10 months. See paragraphs 47-50 of the report. |
| Bad debts | 38,192 | 24,278 | Claim adjusted for evidentiary shortcomings. See paragraphs 56-58 of the report. |
| Other loss not categorised | 7,701 | 6,772 | Claim adjusted for evidentiary shortcomings. See paragraph 72 of the report. |
| TOTAL | 212,887 | 115,011 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 1,000 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |
| Interest | 15,388 | n.a. | Governing Council's determination pending. See paragraph 74 of the report. |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Al Awadey Electrical Lights Co. W.L.L. |
| UNCC claim number: | 4004118 |
| UNSEQ number: | E-00998 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---:|---:|---|
| Loss of stock | 220,586 | 176,469 | Original loss of tangible property claim reclassified as loss of stock. Stock claim adjusted for obsolescence. See paragraphs 35 and 37-39 of the report. |
| Loss of profits | 163,095 | 143,572 | Claim adjusted to reflect historical results and to restrict indemnity period to 12 months. See paragraphs 47-50 of the report. |
| TOTAL | 383,681 | 320,041 | |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Al Shammary Watches & Jewellery Co. |
| UNCC claim number: | 4004119 |
| UNSEQ number: | E-00999 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 13,913 | 11,130 | Original loss of tangible property claim reclassified as loss of tangible property and loss of stock. Tangible property claim adjusted for failure to repair/replace. See paragraphs 35-36 of the report. |
| Loss of stock | 596,980 | 596,980 | Recommend awarding claim in full. See paragraphs 35 and 37-39 of the report. |
| TOTAL | 610,893 | 608,110 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 2,500 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

### Recommended awards for twelfth instalment of "E4" claims

### Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Moh'd Al-Fadaghi Trading and General Contracting Company |
| UNCC claim number: | 4004120 |
| UNSEQ number: | E-01000 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 439,688 | 0 | Original loss of tangible property reclassified as loss of stock. Insufficient evidence to substantiate claim. See paragraph 38 of the report. |
| Loss of profits | 29,570 | 5,447 | Claim adjusted to reflect historical results and for evidentiary shortcomings. See paragraphs 47-50 of the report. |
| TOTAL | 469,258 | 5,447 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 1,000 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |
| Interest | 55,724 | n.a. | Governing Council's determination pending. See paragraph 74 of the report. |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Abdul Mohsen Salem Al-Abdul Razzak & Co.
UNCC claim number: 4004121
UNSEQ number: E-01001

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---:|---:|---|
| Loss of stock | 626,020 | 338,890 | Original loss of tangible property reclassified as loss of stock and loss of vehicles. Stock claim adjusted for stock build-up and obsolescence. Goods in transit claim adjusted for evidentiary shortcomings and obsolescence. See paragraphs 35 and 37-39 of the report. |
| Loss of vehicles | 5,850 | 5,850 | Recommend awarding claim in full. See paragraphs 35 and 41 of the report. |
| Loss of profits | 263,213 | 171,564 | Claim adjusted to reflect historical results and for windfall profits. See paragraphs 47-50 of the report. |
| Other loss not categorised | 2,542 | 2,542 | Recommend awarding claim in full. See paragraph 72 of the report. |
| TOTAL | 897,625 | 518,846 | |

| | | | |
|---|---:|---:|---|
| Claim preparation costs | 4,065 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

### Recommended awards for twelfth instalment of "E4" claims

### Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Al Mailam & Shaalan Co. W.L.L. |
| UNCC claim number: | 4004122 |
| UNSEQ number: | E-01002 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 21,493 | 17,984 | Original loss of tangible property claim reclassified as loss of stock and loss of vehicles. Stock claim and goods in transit claims adjusted for obsolescence and evidentiary shortcomings. See paragraphs 35 and 37-39 of the report. |
| Loss of vehicles | 8,015 | 5,516 | Claim adjusted to reflect M.V.V. Table values. See paragraphs 35 and 41 of the report. |
| Loss of profits | 21,525 | 8,941 | Claim adjusted to reflect historical results and for windfall profits. See paragraphs 47-50 of the report. |
| TOTAL | 51,033 | 32,441 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 1,500 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Kuwait & Muscat Trading Co. W.L.L. |
| UNCC claim number: | 4004123 |
| UNSEQ number: | E-01003 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 267 | 267 | Original loss of tangible property claim reclassified as loss of tangible property, loss of stock and loss of cash. Recommend awarding tangible property claim in full. See paragraphs 35-36 of the report. |
| Loss of stock | 63,215 | 34,777 | Claim adjusted for stock build-up, obsolescence and evidentiary shortcomings. See paragraphs 35 and 37-39 of the report. |
| Loss of cash | 5,479 | 5,479 | Recommend awarding claim in full. See paragraphs 35 and 40 of the report. |
| Loss of profits | 17,865 | 8,535 | Claim adjusted to reflect historical results. See paragraphs 47-50 of the report. |
| Bad debts | 8,134 | 5,773 | Claim adjusted for evidentiary shortcomings. See paragraphs 56-58 of the report. |
| TOTAL | 94,960 | 54,831 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 2,000 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

### Recommended awards for twelfth instalment of "E4" claims

### Reported by claimant name and category of loss

Claimant's name: Al-Qimmah Al-Baidha Sanitary Co. W.L.L.
UNCC claim number: 4004125
UNSEQ number: E-01005

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 389,820 | 287,838 | Original tangible property claim reclassified as loss of stock and loss of cash. Stock claim adjusted for stock build-up, obsolescence. Goods in transit claim adjusted for evidentiary shortcomings and obsolescence. See paragraphs 35 and 37-39 of the report. |
| Loss of cash | 7,622 | 0 | Insufficient evidence to substantiate claim. See paragraphs 35 and 40 of the report. |
| Loss of profits | 33,572 | 33,446 | Claim adjusted to reflect historical results. See paragraphs 47-50 of the report. |
| TOTAL | 431,014 | 321,284 | |

## Annex II

### Recommended awards for twelfth instalment of "E4" claims

### Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Al-Taif General Trading & Cont. Co. |
| UNCC claim number: | 4004126 |
| UNSEQ number: | E-01006 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 12,493 | 5,313 | Original loss of tangible property claim reclassified as loss of tangible property, loss of stock and loss of cash. Tangible property claim adjusted for depreciation and failure to repair/replace. See paragraphs 35-36 of the report. |
| Loss of stock | 82,794 | 72,916 | Stock and goods in transit claims adjusted for obsolescence. See paragraphs 35 and 37-39 of the report. |
| Loss of cash | 3,735 | 0 | Insufficient evidence to substantiate claim. See paragraphs 35 and 40 of the report. |
| TOTAL | 99,022 | 78,229 | |

## Annex II

### Recommended awards for twelfth instalment of "E4" claims

### Reported by claimant name and category of loss

Claimant's name: Brazilia Gen. Trd. & Cont. Co. W.L.L.
UNCC claim number: 4004127
UNSEQ number: E-01007

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 606,163 | 127,559 | Original loss of tangible property claim reclassified as loss stock. Stock claim adjusted for stock build-up and obsolescence. Goods in transit claim adjusted for obsolescence. See paragraphs 35 and 37-39 of the report. |
| Loss of profits | 12,551 | 2,447 | Claim adjusted to reflect historical results and for windfall profits. See paragraphs 47-50 of the report. |
| TOTAL | 618,714 | 130,006 | |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Al Tai for Trading & Contracting Company Faisal Saleh Shebeb & Partners T.B.
UNCC claim number: 4004128
UNSEQ number: E-01008

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 237,917 | 125,753 | Original loss of tangible property claim reclassified as loss of stock. Stock claim adjusted for stock build-up and obsolescence. See paragraphs 35 and 37-39 of the report. |
| Loss of profits | 32,374 | 9,541 | Claim adjusted to reflect historical results, for windfall profits and evidentiary shortcomings. See paragraphs 47-50 of the report. |
| TOTAL | 270,291 | 135,294 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 2,000 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Al Ghanim and Darras Automotive and Equipments Co. W.L.L.
UNCC claim number: 4004129
UNSEQ number: E-01009

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 121,179 | 91,367 | Original loss of tangible property claim reclassified as loss of stock and loss of vehicles. Stock claim adjusted for evidentiary shortcomings and obsolescence. See paragraphs 35 and 37-39 of the report. |
| Loss of vehicles | 6,900 | 5,765 | Claim adjusted to reflect M.V.V. Table values. See paragraphs 35 and 41 of the report. |
| TOTAL | 128,079 | 97,132 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 1,000 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |
| Interest | 23,214 | n.a. | Governing Council's determination pending. See paragraph 74 of the report. |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Industrial Construction & Trading Co.
UNCC claim number: 4004130
UNSEQ number: E-01010

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of profits | 143,339 | 13,372 | Original loss of contracts claim reclassified as loss of profits. Profits claim adjusted to reflect historical results and for windfall profits. See paragraphs 47-50 of the report. |
| TOTAL | 143,339 | 13,372 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 2,000 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Lalwa Al-Behar for Clothing Trading Co. Yousif Jamal Mohammed & Sons |
| UNCC claim number: | 4004131 |
| UNSEQ number: | E-01011 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 12,370 | 10,385 | Original loss of tangible property claim reclassified as loss of tangible property and loss of stock. Tangible property claim adjusted for depreciation. See paragraphs 35-36 of the report. |
| Loss of stock | 34,782 | 27,826 | Claim adjusted for obsolescence. See paragraphs 35 and 37-39 of the report. |
| Loss of profits | 9,166 | 5,376 | Claim adjusted to reflect historical results and to restrict indemnity period to seven months. See paragraphs 47-50 of the report. |
| TOTAL | 56,318 | 43,587 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 3,171 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

### Recommended awards for twelfth instalment of "E4" claims

### Reported by claimant name and category of loss

Claimant's name: Al Messila Travel Co. W.L.L.
UNCC claim number: 4004132
UNSEQ number: E-01012

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 12,719 | 5,624 | Original loss of tangible property claim reclassified as loss of tangible property and loss of cash. Tangible property claim adjusted for depreciation. See paragraphs 35-36 of the report. |
| Loss of cash | 5,750 | 5,750 | Recommend awarding claim in full. See paragraphs 35 and 40 of the report. |
| Loss of profits | 55,282 | 0 | Original payment or relief to others claim reclassified to loss of profits. Profits claim adjusted to reflect historical results. See paragraphs 47-50 of the report. |
| Restart costs | 1,002 | 1,002 | Recommend awarding claim in full. See paragraphs 60-67 of the report |
| TOTAL | 74,753 | 12,376 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 7,930 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

### Recommended awards for twelfth instalment of "E4" claims

### Reported by claimant name and category of loss

Claimant's name: Dar Al Hadaf Press Co. Ahmed Abdul Aziz Al Jar Allah & Co. W.L.L., Kuwait
UNCC claim number: 4004133
UNSEQ number: E-01013

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of real property | 44,800 | 35,840 | Claim adjusted for maintenance. See paragraphs 31-32 of the report. |
| Loss of profits | 92,832 | 71,004 | Claim adjusted to reflect historical results. See paragraphs 47-50 of the report. |
| TOTAL | 137,632 | 106,844 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 3,000 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

## Recommended awards for twelfth instalment of "F4" claims

## Reported by claimant name and category of loss

Claimant's name: Food Supply Company - Emad Abdul Rahman Farhan Al-Fareih
UNCC claim number: 4004134
UNSEQ number: E-01015

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 39,221 | 31,827 | Claim adjusted for evidentiary shortcomings and depreciation. See paragraphs 35-36 of the report. |
| Loss of profits | 29,509 | 2,011 | Claim adjusted to reflect historical results and to restrict indemnity period to 12 months. See paragraphs 47-50 of the report. |
| Restart costs | 9,252 | 6,014 | Claim adjusted for evidentiary shortcomings. See paragraphs 60-67 of the report |
| TOTAL | 77,982 | 39,852 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 1,125 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |
| Interest | 2,730 | n.a. | Governing Council's determination pending. See paragraph 74 of the report. |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Sanam Company for Photography & Gifts and Artistic Production
UNCC claim number: 4004135
UNSEQ number: E-01016

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 81,840 | 46,010 | Original loss of tangible property claim reclassified as loss of tangible property and loss of vehicles. Tangible property claim adjusted for evidentiary shortcomings and failure to repair/replace. See paragraphs 35-36 of the report. |
| Loss of vehicles | 2,000 | 2,000 | Recommend awarding claim in full. See paragraphs 35 and 41 of the report. |
| Loss of profits | 1,167 | 875 | Claim adjusted for windfall profits. See paragraphs 47-50 of the report. |
| TOTAL | 85,007 | 48,885 | |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Gulf Cleaning and Contracting Co.
UNCC claim number: 4004136
UNSEQ number: E-01017

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 7,248 | 5,936 | Original loss of tangible property claim reclassified as loss of tangible property and loss of stock. Tangible property claim adjusted for depreciation. See paragraphs 35-36 of the report. |
| Loss of stock | 53,236 | 31,519 | Claim adjusted for stock build-up and obsolescence. See paragraphs 35 and 37-39 of the report. |
| TOTAL | 60,484 | 37,455 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 500 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |
| Interest | 10,963 | n.a. | Governing Council's determination pending. See paragraph 74 of the report. |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Al-Nawras Furnishing and Office Equipments Company |
| UNCC claim number: | 4004138 |
| UNSEQ number: | E-01019 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 29,330 | 9,045 | Original loss of tangible property claim reclassified as loss of stock. Stock claim adjusted for stock build-up, obsolescence and evidentiary shortcomings. See paragraphs 35 and 37-39 of the report. |
| Loss of profits | 24,736 | 7,357 | Original loss of income-producing property claim reclassified as loss of profits. Profits claim adjusted to reflect historical results, to restrict indemnity period to seven months and for evidentiary shortcomings. See paragraphs 47-50 of the report. |
| TOTAL | 54,066 | 16,402 | |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Al-Amal Trading and Contracting Company - Omer Shamlan Al-Hassawi & Partner |
| UNCC claim number: | 4004139 |
| UNSEQ number: | E-01020 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 60,762 | 48,610 | Original loss of tangible property claim reclassified as loss of tangible property and loss of stock. Tangible property claim adjusted for evidentiary shortcomings and maintenance. See paragraphs 35-36 of the report. |
| Loss of stock | 26,156 | 9,051 | Claim adjusted for stock build-up, obsolescence and evidentiary shortcomings. See paragraphs 35 and 37-39 of the report. |
| Loss of profits | 118,148 | 33,151 | Claim adjusted to reflect historical results, to restrict indemnity period to seven months and for evidentiary shortcomings. See paragraphs 47-50 of the report. |
| TOTAL | 205,066 | 90,812 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 1,241 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Hajy Mohamad Dehdary Co. & Sons |
| UNCC claim number: | 4004140 |
| UNSEQ number: | E-01021 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 408,415 | 206,716 | Original loss of tangible property claim reclassified as loss of stock. Stock claim adjusted for stock build-up and obsolescence. See paragraphs 35 and 37-39 of the report. |
| Loss of profits | 48,015 | 24,524 | Claim adjusted to reflect historical results and to restrict indemnity period to seven months. See paragraphs 47-50 of the report. |
| TOTAL | 456,430 | 231,240 | |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Sohar Food Trading Co. W.L.L.
UNCC claim number: 4004141
UNSEQ number: E-01022

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 4,165 | 3,119 | Original loss of tangible property claim reclassified as loss of tangible property, loss of stock and loss of vehicles. Tangible property claim adjusted for depreciation and evidentiary shortcomings. See paragraphs 35-36 of the report. |
| Loss of stock | 61,887 | 32,182 | Claim adjusted for obsolescence and evidentiary shortcomings. See paragraphs 35 and 37-39 of the report. |
| Loss of vehicles | 11,900 | 11,383 | Claim adjusted to reflect M.V.V. Table values. See paragraphs 35 and 41 of the report. |
| TOTAL | 77,952 | 46,684 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 532 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |
| Interest | 14,129 | n.a. | Governing Council's determination pending. See paragraph 74 of the report. |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Al-Sayafee Trading and Marine Services Co.
UNCC claim number: 4004142
UNSEQ number: E-01023

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 289,253 | 98,069 | Original loss of tangible property claim reclassified as loss of stock. Stock claim adjusted for stock build-up, obsolescence and evidentiary shortcomings. See paragraphs 35 and 37-39 of the report. |
| Loss of profits | 34,902 | 15,706 | Claim adjusted for windfall profits and evidentiary shortcomings. See paragraphs 47-50 of the report. |
| TOTAL | 324,155 | 113,775 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 1,500 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Abdulghafoor & Mostafa Readymade Garments & Shoes Co. W.L.L.
UNCC claim number: 4004143
UNSEQ number: E-01024

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 72,440 | 46,278 | Original loss of tangible property claim reclassified as loss of stock. Stock claim adjusted for stock build-up and obsolescence. See paragraphs 35 and 37-39 of the report. |
| Loss of profits | 25,752 | 8,261 | Claim adjusted to reflect historical results and to restrict indemnity period to seven months. See paragraphs 47-50 of the report. |
| TOTAL | 98,192 | 54,539 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 1,000 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Burgan Kuwait Company for Used Cars
UNCC claim number: 4004144
UNSEQ number: E-01025

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 228,149 | 113,147 | Original loss of tangible property claim reclassified as loss of stock. Stock and goods in transit claims adjusted for evidentiary shortcomings and obsolescence. See paragraphs 35 and 37-39 of the report. |
| Other loss not categorised | 10,500 | 0 | Insufficient evidence to substantiate claim. See paragraph 71 of the report. |
| TOTAL | 238,649 | 113,147 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 1,300 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

### Recommended awards for twelfth instalment of "E4" claims

### Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Sagar Jewellers Co. |
| UNCC claim number: | 4004145 |
| UNSEQ number: | E-01026 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 1,623 | 1,623 | Original loss of tangible property claim reclassified as loss of tangible property and loss of stock and bad debts. Recommend awarding tangible property claim in full. See paragraphs 35-36 of the report. |
| Loss of stock | 60,750 | 9,724 | Claim adjusted for stock build-up and obsolescence. See paragraphs 35 and 37-39 of the report. |
| Loss of profits | 31,275 | 11,261 | Claim adjusted to reflect historical results, to restrict indemnity period to 12 months, for windfall profits and evidentiary shortcomings. See paragraphs 47-50 of the report. |
| Bad debts | 952 | 0 | Insufficient evidence to substantiate claim. See paragraphs 56-58 of the report. |
| TOTAL | 94,600 | 22,608 | |

# Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Al Sa'ada Taxi Company
UNCC claim number: 4004090
UNSEQ number: E-01027

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 14,628 | 11,702 | Original loss of tangible property claim reclassified as loss of tangible property, loss of cash and loss of vehicles. Tangible property claim adjusted for failure to repair/replace. See paragraphs 35-36 of the report. |
| Loss of cash | 7,842 | 7,842 | Recommend awarding claim in full. See paragraphs 35 and 40 of the report. |
| Loss of vehicles | 20,321 | 18,096 | Claim adjusted to reflect M.V.V. Table values. See paragraphs 35 and 41 of the report. |
| Loss of profits | 34,507 | 17,444 | Claim adjusted to reflect historical results. See paragraphs 47-50 of the report. |
| TOTAL | 77,298 | 55,084 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 776 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Al-Awdi & Partners for Cons. Mater. & Cont. & Building Co.

UNCC claim number: 4004091

UNSEQ number: E-01028

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 21,659 | 21,659 | Original loss of tangible property claim reclassified as loss of tangible property, loss of stock and loss of vehicles. Recommend awarding tangible property claim in full. See paragraphs 35-36 of the report. |
| Loss of stock | 240,000 | 182,343 | Claim adjusted for stock build-up and obsolescence. See paragraphs 35 and 37-39 of the report. |
| Loss of vehicles | 13,600 | 4,158 | Claim adjusted to reflect M.V.V. Table values. See paragraphs 35 and 41 of the report. |
| Loss of profits | 11,613 | 8,826 | Claim adjusted to reflect historical results. See paragraphs 47-50 of the report. |
| TOTAL | 286,872 | 216,986 | |

## Annex II

### Recommended awards for twelfth instalment of "E4" claims

### Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Kuwait and Oman General Trading Co. W.L.L. |
| UNCC claim number: | 4004092 |
| UNSEQ number: | E-01029 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 19,110 | 15,288 | Original loss of tangible property claim reclassified as loss of tangible property, loss of stock, loss of cash and loss of vehicles. Tangible property claim adjusted for failure to repair/replace. See paragraphs 35-36 of the report. |
| Loss of stock | 277,142 | 112,388 | Claim adjusted for stock build-up, obsolescence and evidentiary shortcomings. See paragraphs 35 and 37-39 of the report. |
| Loss of cash | 975 | 975 | Recommend awarding claim in full. See paragraphs 35 and 40 of the report. |
| Loss of vehicles | 2,700 | 2,700 | Recommend awarding claim in full. See paragraphs 35 and 41 of the report. |
| Loss of profits | 9,220 | 3,766 | Claim adjusted to reflect historical results. See paragraphs 47-50 of the report. |
| TOTAL | 309,147 | 135,117 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 778 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | National Piling Company W.L.L. |
| UNCC claim number: | 4004093 |
| UNSEQ number: | E-01030 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 427,711 | 300,170 | Original loss of tangible property claim reclassified as loss of tangible property, loss of stock and loss of vehicles.<br>Tangible property claim adjusted for depreciation and failure to repair/replace. See paragraphs 35-36 of the report. |
| Loss of stock | 252,500 | 98,372 | Claim adjusted for stock build-up and evidentiary shortcomings. See paragraphs 35 and 37-39 of the report. |
| Loss of vehicles | 10,406 | 7,523 | Claim adjusted for evidentiary shortcomings and to reflect M.V.V. Table values. See paragraphs 35 and 41 of the report. |
| Loss of profits | 27,503 | 27,468 | Claim adjusted for arithmetical error. See paragraphs 47-50 of the report. |
| TOTAL | 718,120 | 433,533 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 6,300 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Al-Deek Al-Roumi Restaurant Company |
| UNCC claim number: | 4004094 |
| UNSEQ number: | E-01031 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of real property | 9,260 | 7,408 | Original restart costs claim reclassified as loss of real property and loss of tangible property. Real property claim adjusted for maintenance. See paragraphs 31-32 of the report. |
| Loss of tangible property | 15,740 | 12,592 | Claim adjusted for maintenance. See paragraphs 35-36 of the report. |
| Loss of stock | 4,803 | 2,654 | Original tangible property claim reclassified as loss of stock and loss of cash. Stock claim adjusted for obsolescence and evidentiary shortcomings. See paragraphs 35 and 37-39 of the report. |
| Loss of cash | 2,129 | 2,129 | Recommend awarding claim in full. See paragraphs 35 and 40 of the report. |
| Loss of profits | 179,280 | 134,460 | Claim adjusted for windfall profits. See paragraphs 47-50 of the report. |
| TOTAL | 211,212 | 159,243 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 1,000 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |
| Interest | 25,093 | n.a. | Governing Council's determination pending. See paragraph 74 of the report. |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

|  |  |
|---|---|
| Claimant's name: | Al Firoz Shoes Company |
| UNCC claim number: | 4004096 |
| UNSEQ number: | E-01033 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 197,553 | 149,162 | Original loss of tangible property claim reclassified as loss of stock and loss of cash. Stock claim adjusted for evidentiary shortcomings and obsolescence. See paragraphs 35 and 37-39 of the report. |
| Loss of cash | 500 | 500 | Recommend awarding claim in full. See paragraphs 35 and 40 of the report. |
| Loss of profits | 17,262 | 16,491 | Claim adjusted to reflect historical results. See paragraphs 47-50 of the report. |
| TOTAL | 215,315 | 166,153 |  |

|  |  |  |  |
|---|---|---|---|
| Claim preparation costs | 1,000 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |
| Interest | 25,568 | n.a. | Governing Council's determination pending. See paragraph 74 of the report. |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Mohammad Al-Dosary & Sons Co. |
| UNCC claim number: | 4004098 |
| UNSEQ number: | E-01035 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 32,746 | 25,036 | Original loss of tangible property claim reclassified as loss of stock. Stock claim adjusted for stock build-up and obsolescence. See paragraphs 35 and 37-39 of the report. |
| Loss of profits | 10,871 | 10,647 | Claim adjusted to reflect historical results. See paragraphs 47-50 of the report. |
| TOTAL | 43,617 | 35,683 | |

## Annex II

### Recommended awards for twelfth instalment of "E4" claims

### Reported by claimant name and category of loss

Claimant's name: Kuwaiti-Bahraini Exchange Co. W.L.L.
UNCC claim number: 4004099
UNSEQ number: E-01036

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of vehicles | 1,500 | 1,500 | Original loss of tangible property claim reclassified as loss of vehicles. Recommend awarding vehicles claim in full. See paragraphs 35 and 41 of the report. |
| Loss of profits | 53,762 | 40,321 | Claim adjusted for windfall profits. See paragraphs 47-50 of the report. |
| TOTAL | 55,262 | 41,821 | |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Aziz Optician Co.(Salman & Makhany) |
| UNCC claim number: | 4004100 |
| UNSEQ number: | E-01037 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 9,969 | 1,819 | Original tangible property claim reclassified as loss of tangible property and loss of stock. Tangible property claim adjusted for depreciation. See paragraphs 35-36 of the report. |
| Loss of stock | 18,475 | 14,780 | Claim adjusted for obsolescence. See paragraphs 35 and 37-39 of the report. |
| Loss of profits | 13,683 | 5,600 | Claim adjusted to reflect historical results, for evidentiary shortcomings and windfall profits. See paragraphs 47-50 of the report. |
| TOTAL | 42,127 | 22,199 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 700 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Oman Exchange Co. W.L.L. |
| UNCC claim number: | 4004101 |
| UNSEQ number: | E-01038 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 20,502 | 16,402 | Claim adjusted for failure to repair/replace. See paragraphs 35-36 of the report. |
| Loss of profits | 36,264 | 22,665 | Claim adjusted to restrict indemnity period to ten months and for windfall profits. See paragraphs 47-50 of the report. |
| TOTAL | 56,766 | 39,067 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 3,574 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Al Tanseek Trading & Cont. Co. W.L.L.
UNCC claim number: 4004102
UNSEQ number: E-01039

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 6,779 | 5,423 | Original tangible property claim reclassified as loss of tangible property, loss of stock and loss of vehicles. Tangible property claim adjusted for evidentiary shortcomings. See paragraphs 35-36 of the report. |
| Loss of stock | 81,811 | 73,630 | Claim adjusted for obsolescence. See paragraphs 35 and 37-39 of the report. |
| Loss of vehicles | 2,534 | 2,534 | Recommend awarding vehicles claim in full. See paragraphs 35 and 41 of the report. |
| Loss of profits | 171,979 | 17,608 | Original loss of contracts claim reclassified to loss of profits. Claim adjusted to reflect historical results for a ten month indemnity period. See paragraphs 47-50 of the report. |
| TOTAL | 263,103 | 99,195 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 2,450 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

### Recommended awards for twelfth instalment of "E4" claims

### Reported by claimant name and category of loss

Claimant's name: Warba Medical Supplies Co.
UNCC claim number: 4004103
UNSEQ number: E 01040

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 130,839 | 74,497 | Original loss of tangible property claim reclassified as loss of stock. Stock claim adjusted for obsolescence and for evidentiary shortcomings. Insufficient evidence to substantiate claim for goods in transit. See paragraphs 35 and 37-39 of the report. |
| Loss of profits | 70,004 | 70,004 | Recommend awarding profits claim in full. See paragraphs 47-50 of the report. |
| TOTAL | 200,843 | 144,501 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 1,500 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Al Jawad Trading & Contracting Co.
UNCC claim number: 4004104
UNSEQ number: E-01041

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 28,063 | 22,450 | Original loss of tangible property claim reclassified as loss of tangible property, loss of stock and loss of vehicles. Tangible property claim adjusted for failure to repair/replace. See paragraphs 35-36 of the report. |
| Loss of stock | 1,078 | 467 | Claim adjusted for stock build-up, obsolescence and evidentiary shortcomings. See paragraphs 35 and 37-39 of the report. |
| Loss of vehicles | 2,981 | 2,581 | Claim adjusted to reflect M.V.V. Table values. See paragraphs 35 and 41 of the report. |
| Loss of profits | 49,610 | 33,370 | Claim adjusted to reflect historical results and for windfall profits. See paragraphs 47-50 of the report. |
| TOTAL | 81,732 | 58,868 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 450 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

### Recommended awards for twelfth instalment of "E4" claims

### Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Middle East Group for Trading and Contracting Abdal Latif Abdulla Al Mehri & Partner Co. W.L.L. |
| UNCC claim number: | 4004105 |
| UNSEQ number: | E-01042 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of real property | 62,757 | 42,675 | Claim adjusted for maintenance. See paragraphs 31-32 of the report. |
| Loss of stock | 326,124 | 195,708 | Original loss of tangible property claim reclassified as loss of stock. Stock claim adjusted for stock build-up, obsolescence and evidentiary shortcomings. See paragraphs 35 and 37-39 of the report. |
| Loss of profits | 5,708 | 4,281 | Claim adjusted for windfall profits. See paragraphs 47-50 of the report. |
| TOTAL | 394,589 | 242,664 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 1,500 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Minefah General Trading & Cont. Co. Nouri & Faisal Abdel Aziz Al-Nouri

UNCC claim number: 4004106

UNSEQ number: E-01043

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of real property | 15,841 | 12,673 | Claim adjusted for maintenance. See paragraphs 31-32 of the report. |
| Loss of stock | 198,027 | 126,273 | Original loss of tangible property claim reclassified as loss of stock. Stock claim adjusted for stock build-up, obsolescence and evidentiary shortcomings. See paragraphs 35 and 37-39 of the report. |
| Loss of profits | 23,272 | 4,192 | Claim adjusted to reflect historical results and for windfall profits. See paragraphs 47-50 of the report. |
| TOTAL | 237,140 | 143,138 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 7,300 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Al- Najar & Al-Jallad Bicycles & Toys |
| UNCC claim number: | 4004107 |
| UNSEQ number: | E-01044 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 410,164 | 151,398 | Original loss of tangible property claim reclassified as loss of stock. Stock claim adjusted for stock build-up, obsolescence and evidentiary shortcomings. See paragraphs 35 and 37-39 of the report. |
| Loss of profits | 7,596 | 3,172 | Claim adjusted to reflect historical results, for windfall profits and evidentiary shortcomings. See paragraphs 47-50 of the report. |
| TOTAL | 417,760 | 154,570 | |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Topaz Shoes Company |
| UNCC claim number: | 4004108 |
| UNSEQ number: | E-01045 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 673 | 538 | Original restart costs claim partially reclassified to loss of tangible property. Tangible property claim adjusted for maintenance. See paragraphs 35-36 of the report. |
| Loss of profits | 41,831 | 14,935 | Original payment or relief to others claim reclassified as loss of profit. Claim adjusted to reflect historical results and for evidentiary shortcomings. See paragraphs 47-50 of the report. |
| Restart costs | 1,239 | 1,239 | Recommend awarding restart costs claim in full. See paragraphs 60-67 of the report |
| TOTAL | 43,743 | 16,712 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 1,981 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |
| Interest | 3,588 | n.a. | Governing Council's determination pending. See paragraph 74 of the report. |

### Annex II

### Recommended awards for twelfth instalment of "E4" claims

### Reported by claimant name and category of loss

|  |  |
|---|---|
| Claimant's name: | Exhibitions International Co. |
| UNCC claim number: | 4004109 |
| UNSEQ number: | E-01046 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 39,516 | 39,516 | Recommend awarding tangible property claim in full. See paragraphs 35-36 of the report. |
| Loss of profits | 184,141 | 57,511 | Claim adjusted to reflect historical results and for evidentiary shortcomings. See paragraphs 47-52 of the report |
| TOTAL | 223,657 | 97,027 |  |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Mechanical Equipment Co. |
| UNCC claim number: | 4004110 |
| UNSEQ number: | E-01047 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of real property | 2,600 | 2,080 | Claim adjusted for maintenance. See paragraphs 31-32 of the report. |
| Loss of tangible property | 4,496 | 3,305 | Original tangible property claim reclassified as loss of tangible property, loss of stock and loss of vehicles. Tangible property claim adjusted for evidentiary shortcomings and depreciation. See paragraphs 35-36 of the report. |
| Loss of stock | 28,878 | 8,619 | Claim adjusted for stock build-up, obsolescence and evidentiary shortcomings. See paragraphs 35 and 37-39 of the report. |
| Loss of vehicles | 800 | 800 | Recommend awarding claim in full. See paragraphs 35 and 41 of the report. |
| Loss of profits | 14,927 | 8,442 | Claim adjusted to reflect historical results and for windfall profits. See paragraphs 47-50 of the report. |
| TOTAL | 51,701 | 23,246 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 1,000 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Al Jabriah Co. for Consultation & Development W.L.L.
UNCC claim number: 4004112
UNSEQ number: E-01049

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 5,358 | 5,358 | Recommend awarding claim in full. See paragraphs 35-36 of the report. |
| Loss of profits | 50,490 | 20,994 | Claim adjusted to reflect historical results and for evidentiary shortcomings. See paragraphs 47-50 of the report. |
| TOTAL | 55,848 | 26,352 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 1,500 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

## Recommended awards for twelfth instalment of 'E4' claims

## Reported by claimant name and category of loss

Claimant's name: Faleh Al-Hajri & Sons for General Trading Contracting Co.
UNCC claim number: 4004114
UNSEQ number: E-01051

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 213,199 | 134,195 | Original loss of tangible property claim reclassified as loss of stock. Stock claim adjusted for stock build-up, obsolescence and evidentiary shortcomings. See paragraphs 35 and 37-39 of the report. |
| Loss of profits | 25,870 | 19,075 | Claim adjusted to reflect historical results and for windfall profits. See paragraphs 47-50 of the report. |
| TOTAL | 239,069 | 153,270 | |

## Annex II

### Recommended awards for twelfth instalment of "E4" claims

### Reported by claimant name and category of loss

Claimant's name: Bader Al-Sumait and Bros. for General Trading & Contracting Co. W.L.L.
UNCC claim number: 4004115
UNSEQ number: E-01052

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of real property | 140,648 | 112,518 | Claim adjusted for maintenance. See paragraphs 31-32 of the report. |
| Loss of tangible property | 18,274 | 0 | Original tangible property claim reclassified as loss of tangible property and loss of stock. Insufficient evidence to substantiate claim for loss of tangible property. See paragraphs 35-36 of the report. |
| Loss of stock | 2,546 | 1,489 | Claim adjusted for obsolescence and for evidentiary shortcomings. See paragraphs 35 and 37-39 of the report. |
| Loss of profits | 173,893 | 105,698 | Claim adjusted to reflect historical results and to restrict indemnity period to 12 months. See paragraphs 47-50 of the report. |
| TOTAL | 335,361 | 219,705 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 4,439 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

# Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Fayez Al-Sahaeej Partners Company for Trading and Contracting |
| UNCC claim number: | 4004161 |
| UNSEQ number: | E-01053 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of contract | 2,096 | 2,096 | Recommend awarding claim in full. See paragraph 28 of the report. |
| Loss of tangible property | 33,138 | 26,510 | Claim adjusted for failure to repair/replace. See paragraphs 35-36 of the report. |
| Loss of profits | 9,594 | 7,195 | Claim adjusted for evidentiary shortcomings. See paragraphs 47-50 of the report. |
| TOTAL | 44,828 | 35,801 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 1,500 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

Annex II

Recommended awards for twelfth instalment of "E4" claims

Reported by claimant name and category of loss

**Claimant's name:** Al Arfaj Engineering Company W.L.L.
**UNCC claim number:** 4004162
**UNSEQ number:** E-01054

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 40,900 | 0 | Original loss of tangible property claim reclassified as loss of stock. Insufficient evidence to substantiate claim for goods in transit. See paragraphs 35 and 37-39 of the report. |
| Loss of profits | 104,890 | 66,786 | Claim adjusted to reflect historical results, to restrict indemnity period to 12 months and for windfall profits. See paragraphs 47-50 of the report. |
| TOTAL | 145,790 | 66,786 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 2,300 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |
| Interest | 14,751 | n.a. | Governing Council's determination pending. See paragraph 74 of the report. |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| **Claimant's name**: | Kindah Fashion Corner Co. "Top Fashion" Presently |
| **UNCC claim number**: | 4004163 |
| **UNSEQ number**: | E-01055 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 26,315 | 17,762 | Original tangible property claim reclassified as loss of tangible property and loss of stock. Tangible property claim adjusted for depreciation and failure to repair/replace. See paragraphs 35-36 of the report. |
| Loss of stock | 70,153 | 25,600 | Claim adjusted for stock build-up and obsolescence. See paragraphs 35 and 37-39 of the report. |
| Loss of profits | 29,937 | 21,138 | Claim adjusted to reflect historical results and to restrict indemnity period to 12 months. See paragraphs 47-50 of the report. |
| TOTAL | 126,405 | 64,500 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 500 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Bobiyan Auto Spare Parts Co./P.C. |
| UNCC claim number: | 4004164 |
| UNSEQ number: | E-01056 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 22,105 | 22,105 | Original tangible property claim reclassified as loss of tangible property and loss of stock. Recommend awarding tangible property claim in full. See paragraphs 35-36 of the report. |
| Loss of stock | 61,115 | 52,642 | Claim adjusted for stock build-up and obsolescence. See paragraphs 35 and 37-39 of the report. |
| Loss of profits | 51,888 | 23,081 | Claim adjusted to reflect historical results. See paragraphs 47-50 of the report. |
| TOTAL | 135,108 | 97,828 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 2,000 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Dalma General Trading and Contracting Company W.L.L. |
| UNCC claim number: | 4004165 |
| UNSEQ number: | E-01057 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 132,382 | 76,452 | Original tangible property claim reclassified as loss of tangible property and loss of vehicles. Tangible property claim adjusted for maintenance, failure to repair/replace and evidentiary shortcomings. See paragraphs 35-36 of the report. |
| Loss of vehicles | 49,424 | 26,407 | Claim adjusted to reflect M.V.V. Table values. See paragraphs 35 and 41 of the report. |
| Loss of profits | 82,270 | 59,879 | Claim adjusted to reflect historical results and for evidentiary shortcomings. See paragraphs 47-50 of the report. |
| TOTAL | 264,076 | 162,738 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 2,000 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Anwal Gold and Precious Metals Company Bader Al Rashood and Partners W.L.L.
UNCC claim number: 4004166
UNSEQ number: E-01058

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 333 | 333 | Original loss of tangible property claim reclassified as loss of tangible property, loss of stock and loss of cash. Recommend awarding tangible property claim in full. See paragraphs 35-36 of the report. |
| Loss of stock | 63,310 | 20,922 | Claim adjusted for stock build-up and evidentiary shortcomings. Insufficient evidence to substantiate claim for goods in transit. See paragraphs 35 and 37-39 of the report. |
| Loss of cash | 2,289 | 0 | Insufficient evidence to substantiate claim. See paragraphs 35 and 40 of the report. |
| TOTAL | 65,932 | 21,255 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 600 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Al Raed Security Co. |
| UNCC claim number: | 4004167 |
| UNSEQ number: | E-01059 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 13,726 | 13,726 | Original tangible property claim reclassified as loss of tangible property and loss of vehicles. Recommend awarding tangible property claim in full. See paragraphs 35-36 of the report. |
| Loss of vehicles | 8,000 | 7,950 | Claim adjusted to reflect M.V.V. Table values. See paragraphs 35 and 41 of the report. |
| Loss of profits | 35,451 | 26,588 | Claim adjusted for windfall profits. See paragraphs 47-50 of the report. |
| TOTAL | 57,177 | 48,264 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 7,330 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Golden Treasures Company W.L.L. |
| UNCC claim number: | 4004168 |
| UNSEQ number: | E-01060 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 317,656 | 175,505 | Original tangible property claim reclassified as loss of stock. Stock claim adjusted for obsolescence and evidentiary shortcomings. See paragraphs 35 and 37-39 of the report. |
| Loss of profits | 98,376 | 98,376 | Recommend awarding claim in full. See paragraphs 47-50 of the report. |
| TOTAL | 416,032 | 273,881 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 1,200 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

# Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Al-Safare Central Market Co. |
| UNCC claim number: | 4004169 |
| UNSEQ number: | E-01061 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 88,317 | 44,635 | Original tangible property claim reclassified to loss of stock. Stock claim adjusted for obsolescence and evidentiary shortcomings. See paragraphs 35 and 37-39 of the report. |
| TOTAL | 88,317 | 44,635 | |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Fajr-Al Khaleeg Building Contracts Co.
UNCC claim number: 4004170
UNSEQ number: E-01062

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 6,850 | 5,403 | Original tangible property claim reclassified as loss of tangible property, loss of stock and loss of cash. Tangible property claim adjusted for failure to repair/replace and depreciation. See paragraphs 35-36 of the report. |
| Loss of stock | 3,500 | 0 | Insufficient evidence to substantiate claim. See paragraphs 35 and 37-39 of the report. |
| Loss of cash | 1,850 | 0 | Insufficient evidence to substantiate claim. See paragraphs 35 and 40 of the report. |
| Loss of profits | 3,320 | 0 | Insufficient evidence to substantiate claim. See paragraphs 47-50 of the report. |
| TOTAL | 15,520 | 5,403 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 550 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Al Fatat Club
UNCC claim number: 4004171
UNSEQ number: E-01063

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 29,659 | 27,224 | Original tangible property claim reclassified as loss of tangible property and loss of vehicles. Tangible property claim adjusted for depreciation. See paragraphs 35-36 of the report. |
| Loss of vehicles | 8,193 | 6,015 | Claim adjusted to reflect M.V.V. Table values. See paragraphs 35 and 41 of the report. |
| Loss of profits | 12,699 | 12,699 | Recommend awarding profits claim in full. See paragraphs 47-50 of the report. |
| TOTAL | 50,551 | 45,938 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 650 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

### Recommended awards for twelfth instalment of "E4" claims

### Reported by claimant name and category of loss

Claimant's name: Abdul Aziz Abdulla & Sons Co.
UNCC claim number: 4004172
UNSEQ number: E-01064

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 48,793 | 33,827 | Claim adjusted for depreciation. See paragraphs 35-36 of the report. |
| Loss of profits | 67,677 | 11,076 | Claim adjusted to reflect historical results, to restrict period of loss to 12 months and for evidentiary shortcomings. See paragraphs 47-50 of the report. |
| TOTAL | 116,470 | 44,903 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 1,000 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Al Muskhat Trading Co. W.L.L. |
| UNCC claim number: | 4004173 |
| UNSEQ number: | E-01065 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 1,518 | 1,214 | Original tangible property claim reclassified as loss of tangible property, loss of stock and loss of vehicles. Tangible property claim adjusted for failure to repair/replace. See paragraphs 35-36 of the report. |
| Loss of stock | 77,782 | 25,422 | Claim adjusted for obsolescence and evidentiary shortcomings. See paragraphs 35 and 37-39 of the report. |
| Loss of vehicles | 445 | 445 | Recommend awarding claim in full. See paragraphs 35 and 41 of the report. |
| Loss of profits | 1,500 | 0 | Original contracts claim reclassified to loss of profits. Claim adjusted to reflect historical results. See paragraphs 47-50 of the report. |
| TOTAL | 81,245 | 27,081 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 2,500 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Aluminium Industries Company W.L.L.
UNCC claim number: 4004174
UNSEQ number: E-01066

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of real property | 13,309 | 10,647 | Claim adjusted for maintenance. See paragraphs 31-32 of the report. |
| Loss of tangible property | 36,836 | 30,579 | Original tangible property claim reclassified as loss of real property, loss of tangible property, loss of stock, loss of vehicles and other loss not categorised. Tangible property claim adjusted for depreciation and maintenance. See paragraphs 35-36 of the report. |
| Loss of stock | 133,888 | 97,075 | Claim adjusted for obsolescence and evidentiary shortcomings See paragraphs 35 and 37-39 of the report. |
| Loss of vehicles | 2,990 | 2,960 | Claim adjusted for evidentiary shortcomings. See paragraphs 35 and 41 of the report. |
| Loss of profits | 62,816 | 0 | Claim adjusted to reflect historical results. See paragraphs 47-50 of the report. |
| Other loss not categorised | 6,510 | 0 | Insufficient evidence to substantiate claim. See paragraph 72 of the report. |
| TOTAL | 256,349 | 141,261 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 2,750 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Abud Al Razzaq Al Qaddumi & Sons Co. for General Contracting and Trade |
| UNCC claim number: | 4004175 |
| UNSEQ number: | E-01067 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 24,779 | 17,754 | Original tangible property claim reclassified as loss of tangible property and loss of stock. Claim adjusted for evidentiary shortcomings and depreciation. See paragraphs 35-36 of the report. |
| Loss of stock | 59,610 | 13,412 | Claim adjusted for obsolescence and evidentiary shortcomings. See paragraphs 35 and 37-39 of the report. |
| Loss of profits | 16,445 | 0 | Insufficient evidence to substantiate claim. See paragraphs 47-50 of the report. |
| TOTAL | 100,834 | 31,166 | |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Al Barh General Trading and Contracts
UNCC claim number: 4004176
UNSEQ number: E-01068

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 5,730 | 5,505 | Original tangible property claim reclassified as loss of tangible property, loss of stock and loss of vehicles. Tangible property claim adjusted for depreciation. See paragraphs 35-36 of the report. |
| Loss of stock | 65,350 | 39,538 | Claim adjusted for stock build-up and obsolescence. See paragraphs 35 and 37-39 of the report. |
| Loss of vehicles | 1,950 | 400 | Claim adjusted to reflect M.V.V. Table values. See paragraphs 35 and 41 of the report. |
| TOTAL | 73,030 | 45,443 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 2,550 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

### Recommended awards for twelfth instalment of "E4" claims

### Reported by claimant name and category of loss

Claimant's name: Al-Julaiah Trading & Contracting
UNCC claim number: 4004177
UNSEQ number: E-01069

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 19,678 | 19,678 | Original tangible property claim reclassified as loss of tangible property and loss of stock. Recommend awarding tangible property claim in full. See paragraphs 35-36 of the report. |
| Loss of stock | 98,978 | 0 | Insufficient evidence to substantiate claim. See paragraphs 35 and 37-39 of the report. |
| Loss of profits | 113,367 | 61,897 | Claim adjusted to reflect historical results. See paragraphs 47-50 of the report. |
| Restart costs | 439,400 | 202,897 | Original other loss not categorised claim reclassified to restart costs and other loss not categorised. See paragraphs 60-66 of the report. |
| Other loss not categorised | 211,074 | 200,000 | For letters of credit claim see paragraph 72 of the report. Recommend awarding claim for cancelled currency in full. |
| TOTAL | 882,497 | 484,472 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 2,000 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

### Recommended awards for twelfth instalment of "E4" claims

### Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Mubarak Al Azmi Ready Wear Co. |
| UNCC claim number: | 4004179 |
| UNSEQ number: | E-01071 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 15,000 | 3,000 | Original tangible property claim reclassified to loss of stock. Stock claim adjusted for obsolescence and evidentiary shortcomings. See paragraphs 35 and 37-39 of the report. |
| TOTAL | 15,000 | 3,000 | |

## Annex II

### Recommended awards for twelfth instalment of "E4" claims

### Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Union Al Jazira Co. |
| UNCC claim number: | 4004192 |
| UNSEQ number: | E-01074 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 3,513 | 2,016 | Original tangible property claim reclassified as loss of tangible property and loss of stock. Tangible property claim adjusted for depreciation and failure to repair/replace. See paragraphs 35-36 of the report. |
| Loss of stock | 200,376 | 116,742 | Claim for stock build-up and obsolescence. See paragraphs 35 and 37-39 of the report. |
| Loss of profits | 14,100 | 1,949 | Claim adjusted to reflect historical results, for evidentiary shortcomings and windfall profits. See paragraphs 47-50 of the report. |
| TOTAL | 217,989 | 120,707 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 2,000 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

### Recommended awards for twelfth instalment of "E4" claims

### Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Hussin and Bahrami Contracting Co. |
| UNCC claim number: | 4004194 |
| UNSEQ number: | E-01076 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 54,833 | 25,229 | Original tangible property reclassified as loss of tangible property and loss of cash. Tangible property claim adjusted for evidentiary shortcomings, failure to repair/replace and depreciation. See paragraphs 35-36 of the report. |
| Loss of cash | 137 | 137 | Recommend awarding claim in full. See paragraphs 35 and 40 of the report. |
| Loss of profits | 20,016 | 13,344 | Claim adjusted to restrict indemnity period to 12 months. See paragraphs 47-50 of the report. |
| Bad debts | 1,000 | 1,000 | Recommend awarding claim in full. See paragraphs 56-58 of the report. |
| Restart costs | 275 | 275 | Recommend awarding claim in full. See paragraphs 60-67 of the report |
| TOTAL | 76,261 | 39,985 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 1,100 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Al Asmar Food Co.
UNCC claim number: 4004195
UNSEQ number: E-01077

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 80,200 | 10,081 | Original tangible property reclassified as loss of stock. Stock claim adjusted for stock build-up, obsolescence and evidentiary shortcomings. See paragraphs 35 and 37-39 of the report. |
| Loss of profits | 15,960 | 7,182 | Claim adjusted for evidentiary shortcomings. See paragraphs 47-50 of the report. |
| TOTAL | 96,160 | 17,263 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 745 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Naif Hamad Al Dabous & Sons Co. W.L.L. |
| UNCC claim number: | 4004196 |
| UNSEQ number: | E-01078 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of contract | 389,140 | 97,285 | Original contracts claim reclassified to loss of contracts and loss of profits. Contracts claim adjusted for evidentiary shortcomings. See paragraph 28 of the report. |
| Loss of real property | 53,994 | 43,195 | Claim adjusted for failure to repair/replace. See paragraphs 31-32 of the report. |
| Loss of tangible property | 114,704 | 91,763 | Original tangible property and vehicles claims reclassified as loss of tangible property, loss of stock and loss of vehicles. Tangible property claim adjusted for failure to repair/replace. See paragraphs 35-36 of the report. |
| Loss of stock | 110,934 | 64,897 | Claim adjusted for obsolescence and evidentiary shortcomings. See paragraphs 35 and 37-39 of the report. |
| Loss of vehicles | 83,250 | 59,133 | Claim adjusted for evidentiary shortcomings and to reflect M.V.V. Table values. See paragraphs 35 and 41 of the report. |
| Loss of profits | 1,297,132 | 0 | Claim adjusted to reflect historical results. See paragraphs 47-50 of the report. |
| TOTAL | 2,049,154 | 356,273 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 7,000 | n.a. | Governing Council's determination pending. See paragraph 71 of the report. |

## Annex II

### Recommended awards for twelfth instalment of "E4" claims

### Reported by claimant name and category of loss

Claimant's name: Essa M. Baloushi Sons Company for Building Material & Wood
UNCC claim number: 4004197
UNSEQ number: E-01079

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 65,680 | 0 | Original loss of tangible property claim reclassified as loss of stock. Insufficient evidence to substantiate stock claim. See paragraphs 35 and 37-39 of the report. |
| Loss of profits | 49,967 | 31,783 | Claim adjusted to reflect historical results, to restrict indemnity period to 12 months and for evidentiary shortcomings. See paragraphs 47-50 of the report. |
| TOTAL | 115,647 | 31,783 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 2,000 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Kuwaiti Afgani Co. for Cars Spare Parts
UNCC claim number: 4004198
UNSEQ number: E-01080

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 168,789 | 110,776 | Original loss of tangible property claim reclassified as loss of stock. Stock claim adjusted for evidentiary shortcomings and obsolescence. See paragraphs 35 and 37-39 of the report. |
| Loss of profits | 14,283 | 6,199 | Claim adjusted to reflect historical results and for evidentiary shortcomings. See paragraphs 47-50 of the report. |
| TOTAL | 183,072 | 116,975 | |

## Annex II

### Recommended awards for twelfth instalment of "E4" claims

### Reported by claimant name and category of loss

Claimant's name: Carpentry Art and Decoration Design Company Abdul Aziz Abdul Kader Al-Rashid & Partner
UNCC claim number: 4004199
UNSEQ number: E-01081

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of real property | 6,550 | 5,240 | Claim adjusted for maintenance. See paragraphs 31-32 of the report. |
| Loss of tangible property | 44,505 | 37,247 | Claim adjusted for depreciation. See paragraphs 35-36 of the report. |
| Loss of stock | 25,000 | 0 | Insufficient evidence to substantiate claim. See paragraphs 35 and 37-39 of the report. |
| Loss of vehicles | 5,913 | 4,160 | Claim adjusted to reflect M.V.V. Table values. See paragraphs 35 and 41 of the report. |
| Loss of profits | 9,815 | 4,674 | Claim adjusted to reflect historical results and to restrict indemnity period to seven months. See paragraphs 47-50 of the report. |
| TOTAL | 91,783 | 51,321 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 2,357 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Saada and Sherani Jewellery Company W.L.L.

UNCC claim number: 4004200

UNSEQ number: E-01082

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 224,444 | 116,440 | Original loss of tangible property claim reclassified as loss of stock. Stock claim adjusted for stock build-up and evidentiary shortcomings. See paragraphs 35 and 37-39 of the report. |
| Loss of profits | 37,692 | 17,320 | Claim adjusted to reflect historical results and for windfall profits. See paragraphs 47-50 of the report. |
| TOTAL | 262,136 | 133,760 | |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Jassim Abdulwahab and Partner Co. W.L.L. |
| UNCC claim number: | 4004201 |
| UNSEQ number: | E-01083 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 114,078 | 66,735 | Original loss of tangible property claim reclassified as loss of stock and loss of vehicles. Stock claim adjusted for obsolescence and evidentiary shortcomings. See paragraphs 35 and 37-39 of the report. |
| Loss of vehicles | 5,250 | 3,086 | Claim adjusted for evidentiary shortcomings and to reflect M.V.V. Table values. See paragraphs 35 and 41 of the report. |
| Loss of profits | 73,520 | 73,520 | Recommend awarding profits claim in full. See paragraphs 47-50 of the report. |
| TOTAL | 192,848 | 143,341 | |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Al Attia & Al Khawajah Trading Company

UNCC claim number: 4004202

UNSEQ number: E-01084

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 51,718 | 0 | Original tangible property claim reclassified as loss of stock. Insufficient evidence to substantiate claim. See paragraphs 35 and 37-39 of the report. |
| Loss of profits | 28,336 | 12,714 | Claim adjusted to reflect historical results and for evidentiary shortcomings. See paragraphs 47-50 of the report. |
| TOTAL | 80,054 | 12,714 | |

## Annex II

### Recommended awards for twelfth instalment of "E4" claims

### Reported by claimant name and category of loss

Claimant's name: Kuwait Wood Industries
UNCC claim number: 4004181
UNSEQ number: E-01086

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 10,253 | 6,320 | Original tangible property claim reclassified as loss of tangible property, loss of stock and loss of vehicles. Tangible property claim adjusted for depreciation, failure to repair/replace and maintenance. See paragraphs 35-36 of the report. |
| Loss of stock | 851,028 | 305,982 | Claim adjusted for evidentiary shortcomings and obsolescence. See paragraphs 35 and 37-39 of the report. |
| Loss of vehicles | 793 | 793 | Recommend awarding vehicles claim in full. See paragraphs 35 and 41 of the report. |
| Loss of profits | 15,030 | 0 | Claim adjusted to reflect historical results. See paragraphs 47-50 of the report. |
| TOTAL | 877,104 | 313,095 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 2,960 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Artistic Interior Design Center W.L.L.
UNCC claim number: 4004183
UNSEQ number: E-01088

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 59,189 | 10,687 | Original loss of tangible property claim reclassified as loss of stock. Stock claim adjusted for obsolescence and evidentiary shortcomings. See paragraphs 35 and 37-39 of the report. |
| TOTAL | 59,189 | 10,687 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 688 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Arab European Aluminium Company |
| UNCC claim number: | 4004184 |
| UNSEQ number: | E-01089 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of real property | 3,006 | 2,405 | Claim adjusted for maintenance. See paragraphs 31-32 of the report. |
| Loss of tangible property | 7,852 | 6,282 | Original tangible property claim reclassified as loss of tangible property, loss of stock and loss of cash. Tangible property claim adjusted for failure to repair/replace. See paragraphs 35-36 of the report. |
| Loss of stock | 69,732 | 48,706 | Claim adjusted for obsolescence and evidentiary shortcomings. See paragraphs 35 and 37-39 of the report. |
| Loss of cash | 1,221 | 0 | Insufficient evidence to substantiate claim. See paragraphs 35 and 40 of the report. |
| Loss of profits | 45,924 | 4,488 | Claim adjusted to reflect historical results, for windfall profits and evidentiary shortcomings. See paragraphs 47-50 of the report. |
| TOTAL | 127,735 | 61,881 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 1,000 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Abdulrahman M. Al-Zamil and Saleh A. Al-Abdali Trading Co. - Partnership
UNCC claim number: 4004186
UNSEQ number: E-01091

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of profits | 98,608 | 0 | Claim adjusted to reflect historical results. See paragraphs 47-50 of the report. |
| TOTAL | 98,608 | 0 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 61 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

### Annex II

### Recommended awards for twelfth instalment of "E4" claims

### Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Kuwait Maritime & Mercantile Co. K.S.C. |
| UNCC claim number: | 4004187 |
| UNSEQ number: | E-01092 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of real property | 20,492 | 16,394 | Original tangible property claim reclassified as loss of real property, loss of tangible property, loss of stock, loss of cash and loss of vehicles. Real property claim adjusted for maintenance. See paragraphs 31-32 of the report. |
| Loss of tangible property | 13,709 | 13,709 | Recommend awarding tangible property claim in full. See paragraphs 35-36 of the report. |
| Loss of stock | 34,032 | 26,922 | Claim adjusted for evidentiary shortcomings. See paragraphs 35 and 37-39 of the report. |
| Loss of cash | 2,711 | 2,711 | Recommend awarding cash claim in full. See paragraphs 35 and 40 of the report. |
| Loss of vehicles | 2,534 | 2,339 | Claim adjusted to reflect M.V.V. Table values. See paragraphs 35 and 41 of the report. |
| Loss of profits | 125,477 | 11,401 | Claim adjusted to reflect historical results, for evidentiary shortcomings and for windfall profits. See paragraphs 47-50 of the report. |
| Restart costs | 15,293 | 12,999 | Claim adjusted for evidentiary shortcomings. See paragraphs 60-67 of the report |
| Other loss not categorised | 6,569 | 0 | Original other losses not categorised reclassified as loss of profits, restart costs and other losses not categorised. See paragraph 72 of the report. |
| TOTAL | 220,817 | 86,475 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 1,800 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Reem Al Khaleeg Perfumes & Cosmetics Co. Ltd.
UNCC claim number: 4004188
UNSEQ number: E-01093

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 5,028 | 5,028 | Original tangible property claim reclassified as loss of tangible property, loss of stock, loss of cash and loss of vehicles. Recommend awarding tangible property claim in full. See paragraphs 35-36 of the report. |
| Loss of stock | 442,537 | 286,784 | Claim adjusted for stock build-up and obsolescence. See paragraphs 35 and 37-39 of the report. |
| Loss of cash | 4,120 | 0 | Insufficient evidence to substantiate claim. See paragraphs 35 and 40 of the report. |
| Loss of vehicles | 7,542 | 5,512 | Claim adjusted to reflect M.V.V. Table values. See paragraphs 35 and 41 of the report. |
| Loss of profits | 109,249 | 58,266 | Claim adjusted to reflect historical results, to restrict indemnity period to 12 months and for evidentiary shortcomings. See paragraphs 47-50 of the report. |
| TOTAL | 568,476 | 355,590 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 2,530 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

### Recommended awards for twelfth instalment of "E4" claims

### Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Al-Jadeer Trading Company W.L.L. |
| UNCC claim number: | 4004189 |
| UNSEQ number: | E-01094 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of real property | 62,818 | 50,254 | Original tangible property claim reclassified as loss of real property, loss of tangible property, loss of vehicles and other loss not categorised. Real property claim adjusted for failure to repair/replace. See paragraphs 31-32 of the report. |
| Loss of tangible property | 96,493 | 74,978 | Claim adjusted for evidentiary shortcomings and failure to repair/replace. See paragraphs 35-36 of the report. |
| Loss of vehicles | 12,696 | 3,277 | Claim adjusted to reflect M.V.V. Table values. See paragraphs 35 and 41 of the report. |
| Other loss not categorised | 56,760 | 11,275 | Claim adjusted for evidentiary shortcomings. See paragraph 72 of the report. |
| TOTAL | 228,767 | 139,784 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 1,500 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Kuwait Shipping Agencies Company K.S.C. (Closed)
UNCC claim number: 4004190
UNSEQ number: E-01095

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of profits | 158,597 | 156,500 | Claim adjusted to reflect historical results. See paragraphs 47-50 of the report. |
| Bad debts | 105,956 | 0 | Insufficient evidence to substantiate claim. See paragraphs 56-58 of the report. |
| Restart costs | 3,290 | 0 | Insufficient evidence to substantiate claim. See paragraphs 60-67 of the report |
| TOTAL | 267,843 | 156,500 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 3,126 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Al Fayha General Contracting Co. |
| UNCC claim number: | 4004203 |
| UNSEQ number: | E-01096 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 379,753 | 271,995 | Original tangible property claim reclassified as loss of tangible property, loss of stock and loss of vehicles. Tangible property claim adjusted for depreciation and evidentiary shortcomings. See paragraphs 35-36 of the report. |
| Loss of stock | 17,581 | 15,823 | Claim adjusted for obsolescence. See paragraphs 35 and 37-39 of the report. |
| Loss of vehicles | 299,257 | 185,019 | Claim adjusted for evidentiary shortcomings and to reflect M.V.V. Table values. For non-M.V.V. Table vehicles claim adjusted for depreciation and evidentiary shortcomings. See paragraphs 35 and 41 of the report. |
| Loss of profits | 256,360 | 192,270 | Claim adjusted for windfall profits. See paragraphs 47-50 of the report. |
| TOTAL | 952,951 | 665,107 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 2,250 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |
| Interest | 113,162 | n.a. | Governing Council's determination pending. See paragraph 74 of the report. |

## Annex II

### Recommended awards for twelfth instalment of "E4" claims

### Reported by claimant name and category of loss

**Claimant's name**: International Contracting Company - S.A.K.
**UNCC claim number**: 4004204
**UNSEQ number**: E-01097

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 396,775 | 180,275 | Original tangible property claim reclassified as loss of tangible property, loss of stock and loss of vehicles. Tangible property claim adjusted for depreciation and failure to repair/replace. See paragraphs 35-36 of the report. |
| Loss of stock | 116,548 | 89,159 | Claim adjusted for obsolescence and evidentiary shortcomings. See paragraphs 35 and 37-39 of the report. |
| Loss of vehicles | 24,110 | 19,624 | Claim adjusted to reflect M.V.V. Table values. See paragraphs 35 and 41 of the report. |
| Loss of profits | 68,992 | 0 | Original loss of contracts claim reclassified as loss of profit. See paragraphs 47-50 and 53 of the report. |
| TOTAL | 606,425 | 289,058 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 6,000 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Beyader Construction Company

UNCC claim number: 4004205

UNSEQ number: E-01098

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of real property | 65,904 | 9,654 | Claim adjusted for maintenance and evidentiary shortcomings. See paragraphs 31-32 of the report. |
| Loss of tangible property | 19,645 | 19,645 | Original loss of tangible property claim reclassified as loss of tangible property, loss of stock and loss of vehicles. Recommend awarding tangible property claim in full. See paragraphs 35-36 of the report. |
| Loss of stock | 93,145 | 71,255 | Claim adjusted for obsolescence and evidentiary shortcomings. See paragraphs 35 and 37-39 of the report. |
| Loss of vehicles | 67,322 | 63,905 | Claim adjusted to reflect M.V.V. Table values. See paragraphs 35 and 41 of the report. |
| Payment or relief to others | 10,837 | 0 | Insufficient evidence to substantiate claim. See paragraph 44 of the report. |
| Loss of profits | 475,923 | 0 | Original loss of contracts claim reclassified as loss of profits. Claim adjusted to reflect historical results. See paragraphs 47-50 of the report. |
| TOTAL | 732,776 | 164,459 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 2,750 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Ratqa General Trading & Contracting Co. W.L.L. |
| UNCC claim number: | 4004206 |
| UNSEQ number: | E-01099 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of real property | 81,940 | 6,582 | Claim adjusted for maintenance and evidentiary shortcomings. See paragraphs 31-32 of the report. |
| Loss of tangible property | 210,271 | 206,487 | Original tangible property claim reclassified as loss of tangible property, loss of stock and loss of vehicles. Tangible property claim adjusted for evidentiary shortcomings. See paragraphs 35-36 of the report. |
| Loss of stock | 8,880 | 6,793 | Claim adjusted for obsolescence and evidentiary shortcomings. See paragraphs 35 and 37-39 of the report. |
| Loss of vehicles | 45,650 | 35,805 | Claim adjusted to reflect M.V.V. Table values. See paragraphs 35 and 41 of the report. |
| Payment or relief to others | 9,206 | 0 | Insufficient evidence to substantiate claim. See paragraph 44 of the report. |
| Loss of profits | 263,950 | 128,168 | Original contracts claim reclassified as loss of profits. Claim adjusted to reflect historical results and to restrict indemnity period to 12 months. See paragraphs 47-50 of the report. |
| TOTAL | 619,897 | 383,835 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 2,750 | n.a. | Governing Council's determination pending. See paragraphs 75 of the report. |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Al Artica Trading Co.
UNCC claim number: 4004207
UNSEQ number: E-01100

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 15,874 | 12,699 | Original tangible property claim reclassified as loss of stock. Stock claim adjusted for obsolescence. See paragraphs 35 and 37-39 of the report. |
| Loss of profits | 2,945 | 1,009 | Claim adjusted to reflect historical results, to restrict indemnity period to 12 months and for evidentiary shortcomings. See paragraphs 47-50 of the report. |
| Other loss not categorised | 25,000 | 0 | Insufficient evidence to substantiate claim. See paragraph 72 of the report. |
| TOTAL | 43,819 | 13,708 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 350 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Salem & Bader Paints Company W.L.L. |
| UNCC claim number: | 4004208 |
| UNSEQ number: | E-01101 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 205,225 | 119,211 | Original tangible property claim reclassified as loss of stock. Stock claim adjusted for obsolescence and evidentiary shortcomings. See paragraphs 35 and 37-39 of the report. |
| TOTAL | 205,225 | 119,211 | |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Mzinco Co. for General Enterprises W.L.L.
UNCC claim number: 4004210
UNSEQ number: E-01103

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 13,158 | 7,511 | Original tangible property claim reclassified as loss of tangible property and loss of stock. Tangible property claim adjusted for depreciation. See paragraphs 35-36 of the report. |
| Loss of stock | 40,215 | 32,172 | Claim adjusted for obsolescence. See paragraphs 35 and 37-39 of the report. |
| Loss of profits | 17,758 | 10,795 | Claim adjusted to reflect historical results, to restrict indemnity period to ten months and for evidentiary shortcomings. See paragraphs 47-50 of the report. |
| TOTAL | 71,131 | 50,478 | |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Al Ferdous Pharmacy Company |
| UNCC claim number: | 4004211 |
| UNSEQ number: | E-01104 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 15,923 | 8,576 | Original tangible property claim reclassified as loss of tangible property and loss of stock. Tangible property claim adjusted for depreciation, and evidentiary shortcomings. See paragraphs 35-36 of the report. |
| Loss of stock | 77,832 | 0 | Insufficient evidence to substantiate claim. See paragraphs 35 and 37-39 of the report. |
| Loss of profits | 13,076 | 5,884 | Claim adjusted for evidentiary shortcomings. See paragraphs 47-50 of the report. |
| TOTAL | 106,831 | 14,460 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 619 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

### Recommended awards for twelfth instalment of "E4" claims

### Reported by claimant name and category of loss

Claimant's name: Kuwait Controls Company
UNCC claim number: 4004212
UNSEQ number: E-01105

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of contract | 93,922 | 33,534 | Claim adjusted for evidentiary shortcomings. See paragraph 28 of the report. |
| Loss of tangible property | 58,855 | 47,084 | Original tangible property claim reclassified as loss of tangible property, loss of stock and loss of vehicles. Tangible property claim adjusted for failure to repair/replace. See paragraphs 35-36 of the report. |
| Loss of stock | 11,443 | 8,513 | Claim adjusted for stock build-up and evidentiary shortcomings. See paragraphs 35 and 37-39 of the report. |
| Loss of vehicles | 15,500 | 10,000 | Claim adjusted to reflect M.V.V. Table value. See paragraphs 35 and 41 of the report. |
| Loss of profits | 423,465 | 136,611 | Claim adjusted to reflect historical results and for windfall profits. See paragraphs 47-50 of the report. |
| Bad debts | 2,686 | 0 | Insufficient evidence to substantiate claim. See paragraphs 56-58 of the report. |
| TOTAL | 605,871 | 235,742 | |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Al Mia & Nori Co. Import & Export |
| UNCC claim number: | 4004213 |
| UNSEQ number: | E-01106 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 32,836 | 32,836 | Original tangible property claim reclassified as loss of tangible property, loss of stock and loss of cash. Recommend awarding tangible property claim in full. See paragraphs 35-36 of the report. |
| Loss of stock | 98,187 | 76,250 | Claim adjusted for stock build-up and obsolescence. See paragraphs 35 and 37-39 of the report. |
| Loss of cash | 3,333 | 3,333 | Recommend awarding cash claim in full. See paragraphs 35 and 40 of the report. |
| Loss of profits | 61,367 | 60,242 | Claim adjusted to reflect historical results and to restrict indemnity period to 12 months. See paragraphs 47-50 of the report. |
| TOTAL | 195,723 | 172,661 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 800 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Al Bulooshi & Kafashaan Co. W.L.L.
UNCC claim number: 4004214
UNSEQ number: E-01107

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 277,675 | 199,926 | Original tangible property claim reclassified as loss of stock. Stock claim adjusted for obsolescence and evidentiary shortcomings. See paragraphs 35 and 37-39 of the report. |
| TOTAL | 277,675 | 199,926 | |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: National Computer Services Co.
UNCC claim number: 4004215
UNSEQ number: E-01108

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 157,586 | 91,525 | Original tangible property claim reclassified as loss of tangible property, loss of stock and loss of vehicles. Tangible property claim adjusted for depreciation and failure to repair/replace. See paragraphs 35-36 of the report. |
| Loss of stock | 1,279,942 | 223,684 | Stock claim adjusted for stock build-up and evidentiary shortcomings. Goods in transit claim adjusted for evidentiary shortcomings. See paragraphs 35 and 37-39 of the report. |
| Loss of vehicles | 6,550 | 3,044 | Claim adjusted to reflect M.V.V. Table values and for evidentiary shortcomings. See paragraphs 35 and 41 of the report. |
| Loss of profits | 170,000 | 0 | Claim adjusted to reflect historical results. See paragraphs 47-50 of the report. |
| Bad debts | 32,119 | 0 | Insufficient evidence to substantiate claim. See paragraphs 56-58 of the report. |
| TOTAL | 1,646,197 | 318,253 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 3,500 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |
| Interest | 131,696 | n.a. | Governing Council's determination pending. See paragraph 74 of the report. |

## Annex II

## Recommended awards for twelfth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Al Ahlia Plastic Co. W.L.L.
UNCC claim number: 4004217
UNSEQ number: E-01110

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of real property | 18,815 | 8,418 | Claim adjusted for depreciation and maintenance and failure to repair/replace. See paragraphs 31-32 of the report. |
| Loss of tangible property | 212,079 | 77,381 | Original tangible property claim reclassified as loss of tangible property, loss of stock and loss of vehicles. Tangible property claim adjusted for depreciation and evidentiary shortcomings. See paragraphs 35-36 of the report. |
| Loss of stock | 188,826 | 66,294 | Claim adjusted for obsolescence and evidentiary shortcomings. See paragraphs 35 and 37-39 of the report. |
| Loss of vehicles | 21,500 | 15,640 | Claim adjusted to reflect M.V.V. Table values. See paragraphs 35 and 41 of the report. |
| Bad debts | 100,787 | 0 | Insufficient evidence to substantiate claim. See paragraphs 56-58 of the report. |
| TOTAL | 542,007 | 167,733 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 2,000 | n.a. | Governing Council's determination pending. See paragraph 75 of the report. |
| Interest | 102,772 | n.a. | Governing Council's determination pending. See paragraph 74 of the report. |

## Annex III

## Claims deferred to a later instalment of "E4" claims pursuant to paragraphs 19-21

## Reported by UNSEQ and UNCC claim number and claimant name

| UNSEQ claim No. a/ | UNCC claim No. | Claimant's Name |
|---|---|---|
| E-00971 | 4004078 | Al Sayouf Import, Export and Commission Agent Company W.L.L. |
| E-00982 | 4004089 | Shaya & Shariff Inc./Abdulla Abdulatif Al Shaya & Partners W.L.L. |
| E-00983 | 4004146 | Abbas Ghuloom and Surinder Sahni Spare Parts Co. W.L.L. |
| E-00984 | 4004147 | Al Salmy Co. Electrical & Electronic Appliances |
| E-00986 | 4004149 | Atlas Jewellery Co. |
| E-00989 | 4004152 | Taimaa Construction Materials & Building Contracting Co. |
| E-00997 | 4004117 | Kuwaitna Trading Co. W.L.L. |
| E-01004 | 4004124 | Arab Center for Commerce & Real Estate W.L.L. |
| E-01032 | 4004095 | Al Arbash Jewellery Company W.L.L. |
| E-01034 | 4004097 | Arab Countries Trading & General Contracting Co. W.L.L. |
| E-01050 | 4004113 | Al-Nimo Gen. Trading & Cont. Co. |
| E-01070 | 4004178 | Mushrif Trading & Contracting Co. W.L.L. |
| E-01072 | 4004180 | Saif Al Kuwait General Trading and Contracting Co. W.L.L. |
| E-01073 | 4004191 | Al Toegry & Al Mefleh for General Trading & Con. Co. |
| E-01075 | 4004193 | Doukmak Woollen Co. |
| E-01090 | 4004185 | Al Ahlam Super Market Co. W.L.L. |
| E-01102 | 4004209 | Ataqadom Sanitary Ware Exh. Limited Liability Company |
| E-01109 | 4004216 | Mechanical and Industrial Services Co. |
| E-01111 | 4004218 | Al Raheel Trading & Contracting & Transportation Co. |

a/ The UNSEQ number is the provisional claim number assigned to each claim by PAAC.

# Annex VIII

## Decision concerning the twelfth instalment of E4 claims taken by the Governing Council of the United Nations Compensation Commission at its 105th meeting, held on 15 March 2001 at Geneva*

The Governing Council,

Having received, in accordance with article 38 of the Provisional Rules for Claims Procedure ("the Rules"), the report and recommendations made by the panel of Commissioners concerning the twelfth instalment of "E4" claims, covering 140 claims, 1/

1. Approves the recommendations made by the panel of Commissioners, and, accordingly,

2. Decides, pursuant to article 40 of the Rules, to approve the amounts of the recommended awards concerning the claims covered in the report. The aggregate amount awarded, based on the recommendations contained in annex I of the report, is as follows:

| Country | Number of claims recommended for payment | Number of claims not recommended for payment | Amount of compensation claimed (USD) | Amount of compensation recommended (USD) |
|---|---|---|---|---|
| Kuwait | 119 | 2 | 115,079,578 | 56,709,793 |

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* Previously issued as document S/AC.26/Dec.118 (2001).

1/ The text of the report appears in document S/AC.26/2001/4 (annex VII above).

3. Reaffirms that when funds become available payments shall be made in accordance with decision 100 (S/AC.26/Dec.100 (2000)),

4. Recalls that when payments are made in accordance with decision 100, and pursuant to the terms of decision 18 (S/AC.26/Dec.18 (1994)), the Government of the State of Kuwait shall distribute amounts received to the designated claimants in respect of approved awards within six months of receiving payment, and shall, not later than three months after the expiration of this time limit, provide information on such distribution,

5. Notes that no recommendations have been made at this stage for 19 claims referred to in paragraphs 19 to 21 and annex III of the report,

6. Requests the Executive Secretary to provide a copy of the report to the Secretary-General, to the Government of the Republic of Iraq and to the Government of the State of Kuwait.

# Annex IX

## Report and recommendations made by the Panel of Commissioners concerning the thirteenth instalment of E4 claims*

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* Previously issued as document S/AC.26/2001/5.

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## Introduction

1. At its thirtieth session, held on 14-16 December 1998, the Governing Council of the United Nations Compensation Commission (the "Commission") appointed Messrs. Luiz Olavo Baptista ("Chairman"), Jean Naudet, and Jianxi Wang as the second Panel of Commissioners (the "Panel") charged with reviewing category "E4" claims. The "E4" population consists of claims, other than oil sector and environmental claims, submitted by Kuwaiti private-sector corporations and other entities eligible to file claims under the Commission's "Claim Forms for Corporations and Other Entities" ("Form E").

2. A thirteenth instalment consisting of 140 "E4" claims was submitted to the Panel on 3 July 2000, in accordance with article 32 of the Provisional Rules for Claims Procedure (S/AC.26/1992/10) (the "Rules").

3. Pursuant to article 38 of the Rules, this report contains the Panel's recommendations to the Governing Council concerning the thirteenth instalment claims.

## I. OVERVIEW OF THE THIRTEENTH INSTALMENT CLAIMS

4. The thirteenth instalment claims were selected from the population of approximately 2,750 "E4" claims on the basis of criteria that include, inter alia, the size, volume and complexity of the claims, the legal, factual, and valuation issues raised by the claims, and the date of filing of the claims with the Commission.

5. The thirteenth instalment claimants filed losses aggregating Kuwaiti dinars ("KWD") 51,374,447 (approximately United States dollars ("USD") 177,766,253). The claimants also filed claims for interest totalling KWD 471,724 (approximately USD 1,632,263) and claim preparation costs aggregating KWD 182,744 (approximately USD 632,332).

6. The nature of the legal and factual issues raised in each claim and the amount of documentation provided in support of each claim has allowed the Panel to complete its verification of the claims within 180 days of the date on which the thirteenth instalment claims were submitted to the Panel.

7. All claimants in the thirteenth instalment operated in Kuwait before Iraq's invasion and occupation of Kuwait. Most conducted trading operations, while a few were engaged in manufacturing and service industries.

8. The two most common loss types asserted by claimants in this instalment are loss of tangible property (mainly stock, furniture, fixtures, equipment and vehicles) and loss of earnings or profits. Claimants have also sought compensation for uncollectible receivables, restart costs, interest and claim preparation costs as "other losses".

## II. THE PROCEEDINGS

9. Before the thirteenth instalment claims were submitted to the Panel, the secretariat undertook a preliminary assessment of the claims in accordance with the Rules. This review is described in paragraph 11 of the "Report and recommendations made by the Panel of Commissioners concerning the first instalment of 'E4' claims" (S/AC.26/1999/4) (the "First 'E4' Report"). The results of the review were entered into a centralized database maintained by the secretariat (the "Claims Database").

10. Originally 11 claims presented formal deficiencies and the secretariat issued notifications to these claimants pursuant to article 15 of the Rules. The claimants corrected all formal deficiencies.

11. A substantive review of the claims was undertaken to identify significant legal, factual and valuation issues. The results of the review, including the significant issues identified, were recorded in the Claims Database.

12. The Executive Secretary of the Commission submitted reports 30 and 31 dated 17 February 2000 and 28 April 2000, respectively, to the Governing Council in accordance with article 16 of the Rules. These reports covered, inter alia, the thirteenth instalment of "E4" claims and presented the significant legal and factual issues identified in these claims. A number of Governments, including the Government of Iraq, submitted additional information and views in response to the Executive Secretary's article 16 reports.

13. At the conclusion of the (i) preliminary assessment; (ii) substantive review; and (iii) article 16 reporting, the following documents were made available to the Panel:

(a) The claim documents submitted by the claimants;

(b) The preliminary assessment reports prepared under article 14 of the Rules;

(c) Information and views of Governments, including the Government of Iraq, received in response to the article 16 reports; and

(d) Other information deemed, under article 32 of the Rules, to be useful to the Panel for its work.

14. For the reasons stated in paragraph 17 of the First "E4" Report, the Panel retained the services of an accounting firm and a loss adjusting firm as expert consultants. The Panel directed the expert consultants to review each claim in the thirteenth instalment in accordance with the verification

and valuation methodology developed by the Panel. The Panel directed the expert consultants to submit to the Panel a detailed report for each claim summarizing the expert consultants' findings.

15. By its procedural order dated 10 July 2000, the Panel gave notice of its intention to complete its review of the thirteenth instalment claims and submit its report and recommendations to the Governing Council within 180 days of 3 July 2000. This procedural order was transmitted to the Government of Iraq and the Government of Kuwait.

16. Pursuant to article 34 of the Rules, additional information and evidence was requested from the claimants in order to assist the Panel in its review of the claims. Claimants who were unable to submit the evidence requested were asked to provide reasons for their inability to comply with such requests. All requests for additional information and evidence were directed through the Government of Kuwait's Public Authority for Assessment of Compensation for Damages Resulting from Iraqi Aggression ("PAAC"). These requests were made in relation to the entire "E4" claims population and not just the thirteenth instalment claims.

17. The requests for additional information and evidence are described in prior "E4" reports, e.g., paragraphs 19-24 of the "Report and recommendations made by the Panel of Commissioners concerning the fourth instalment of 'E4' claims" (S/AC.26/1999/18) (the "Fourth 'E4' Report") and paragraph 18 of the "Report and recommendations made by the Panel of Commissioners concerning the sixth instalment of 'E4' claims" (S/AC.26/2000/8) (the "Sixth 'E4' Report"). These requests are not restated in this report.

18. An additional level of verification was performed to determine if related claimants filed duplicate claims. This review is described in paragraph 18 of the Fourth "E4" Report.

19. Pursuant to article 34 of the Rules, the secretariat also sought specific clarifications from one claimant in the thirteenth instalment, i.e., Durrat Al Maidan General Trading Company. The Panel has considered the response submitted by this claimant.

20. During the Panel's review of claims in this instalment, the secretariat informed the Panel of the potential overlap between some claims in this instalment and certain individual claims for business losses filed before the Commission. This issue has been identified and reported to the Governing Council, in connection with the initial review of business loss claims filed by category "D" claimants, in report no. 30, dated 17 February 2000, submitted by the Executive Secretary of the Commission in accordance with article 16 of the Rules.

21. At the Panel's request, the Secretariat conducted a review of the Claims Database and identified eight claims in this instalment of "E4" claims, which present a potential for overlap with other claims filed by individuals for business losses filed before the Commission. These eight "E4" claims have been listed in annex III to this report.

22. The Panel considers that additional time is required to determine the nature and extent of the overlap between these "E4" claims and the potentially overlapping individual claims for business losses. At this stage, to allow time for the additional claim development and review required, the Panel has recommended that the claims listed in annex III be deferred to a later instalment of category "E4" claims. Therefore, the Panel has made no findings concerning the claims listed in annex III to this report. In this report, subsequent references to the thirteenth instalment claims are to the remaining 132 claims listed in annex I.

23. Based on its review of the documents submitted and the additional information obtained, the Panel concluded that the issues presented in the thirteenth instalment claims had been adequately developed and that oral proceedings were not required to assist with the Panel's review of the claims.

## III. LEGAL FRAMEWORK AND VERIFICATION AND VALUATION METHODOLOGY

24. The legal framework and the verification and valuation methodology applied to the evaluation of the claims in this instalment is the same as that used in earlier "E4" instalments. This framework and methodology are discussed in paragraphs 25-62 of the First "E4" Report. Subsequent "E4" reports discuss additional legal and verification and valuation issues that were encountered in later instalments of "E4" claims. These various elements of the Panel's review are not restated in this report. Instead this report refers to sections in the previous "E4" reports where such issues have been addressed.

25. Where the Panel encountered new issues not addressed in prior "E4" reports, the Panel developed methodologies for verifying and valuing the losses. These new issues are discussed in the text of this report. The Panel's specific recommendations on the losses asserted in this instalment and the reasons therefor are set out in the annexes to this report.

26. Before discussing the Panel's specific recommendations for compensating the thirteenth instalment claims, it is important to restate that the Panel's approach to the verification and valuation of these claims balances the claimant's inability always to provide best evidence against the "risk of overstatement" introduced by shortcomings in evidence. In this context, the term "risk of overstatement", defined in paragraph 34 of the First "E4" Report, is used to refer to cases in which claims contain evidentiary

shortcomings that prevent their precise quantification and therefore present a risk that they might be overstated.

## IV. THE CLAIMS

27. The Panel reviewed the claims according to the nature and type of loss identified. Therefore, the Panel's recommendations are set out by loss type. Reclassified losses have been dealt with in the section pertaining to the loss types into which the Panel reclassified the losses.

### A. Contract

28. Three claimants in the present instalment asserted loss of contract claims aggregating KWD 473,085 (approximately USD 1,636,972). Claims for loss of contract in this instalment do not relate to contracts with the Government of Iraq or to contracts requiring performance in Iraq.

29. The claims for loss of contract in this instalment did not raise any new legal or verification and valuation issues. The Panel's approach to the compensability of contract losses is stated in prior "E4" reports and the verification and valuation methodology adopted by the Panel for the loss of contract claims is discussed in paragraphs 77-84 of the First "E4" Report.

30. Al-Amiry Trading & Contracting Company W.L.L. asserted a claim for building materials lost from various project sites where the claimant had contracts in progress. The Panel reclassified this claim to loss of contract. The claimant submitted documents showing shipment of materials to some sites in Kuwait in the first half of 1990. The claimant's financial statements also contained an extraordinary write-off for materials lost from project sites.

31. Historically, the claimant's financial statements showed building materials at project sites as a current asset. The value of this current asset represented the cost of materials used on contracts in progress less income received by the claimant for those contracts in progress. However, it was not possible to reconcile the amount claimed with the claimant's pre-invasion financial statements. Further, the Panel noted that the claimant had not provided copies of the contracts pursuant to which the building materials had been supplied to the sites from which they were stated to have been lost.

32. In view of the lack of information on the underlying contracts, it was not possible to identify whether the other parties to the contracts had raised duplicative claims for the same materials. The claimant also did not provide information on whether it had received any income for the contracts under which the building materials had been delivered to the sites. No information was provided on whether the underlying contracts were

renegotiated in a manner that allowed the claimant to recoup its costs. Finally, as the claimant's financial statements indicated that the claimant earned income from the contracts pursuant to which such building materials were provided, it was not clear whether the present claim was partly or entirely duplicative of the claim for loss of profits raised by the same claimant. In view of the above, the Panel determined that the claimant had not submitted sufficient evidence to demonstrate the circumstances and amount of the claimed loss. The Panel has therefore recommended no compensation for this claim.

33. The Panel's recommendations on contract losses are summarized in annex II.

## B. Real property

34. Twenty-eight claimants in this instalment filed claims aggregating KWD 1,203,045 (approximately USD 4,162,785) for loss of real property. These claims sought compensation for damage to a number of owned and rented premises in Kuwait.

35. The claims for loss of real property in this instalment did not raise any new legal or verification and valuation issues. The compensability standards and the verification and valuation methodology adopted by the Panel for loss of real property claims are stated in paragraphs 89-101 of the First "E4" Report.

36. Claimants in this instalment submitted the same type of evidence encountered by the Panel in earlier "E4" instalments, when reviewing real property claims. This evidence is described in paragraphs 102-106 of the First "E4" Report.

37. The Panel's recommendations on real property losses are summarized in annex II.

## C. Tangible property, stock, cash and vehicles

38. Tangible property losses are claimed by a majority of the thirteenth instalment claimants. The claimed losses, relating to stock, furniture and fixtures, equipment, vehicles and cash, aggregate KWD 33,407,367 (approximately USD 115,596,426).

39. With regard to the compensability and the verification and valuation of these tangible property, stock, cash and vehicle claims, the Panel applied the approach set out in paragraphs 108-135 of the First "E4" Report.

40. The claims for loss of tangible property in this instalment did not raise any new legal or verification and valuation issues. Claimants in this

instalment submitted the same type of evidence encountered by the Panel in earlier "E4" instalments, when reviewing tangible property claims. This evidence is described in paragraphs 47-48 of the Fourth "E4" Report.

41. For most claimants the existence, ownership and value of stocks lost were supported by copies of their audited accounts, original inventory purchase invoices and "roll-forward" calculations, as defined in paragraph 119 of the First "E4" Report. A few claimants sought to rely mainly on employee or related party witness statements to establish the fact of loss of stock. Where the fact of loss of stock was not supported by sufficient evidence, such as the showing of extraordinary losses in the claimant's audited post-liberation financial statements, the Panel has recommended no compensation for such losses.

42. Al-Khateeb Trading Group commenced operations in September 1988 and submitted a claim for loss of stock. From the documents submitted, the Panel noted that the stock held on 2 August 1990 was 300 per cent more than the stock held in 1989. The claimant did not provide an explanation for this stock build-up, although similar volatility in stock was noted in the claimant's results for 1992 and 1993. The basis on which the claimant had computed the cost of goods it sold between January and August 1990 was also unclear. Further, the Panel noted that the claimant had not considered normal obsolescence in computing its claim. However, the claimant did submit a roll-forward calculation and documentary evidence to support its stock purchases in 1990. The claimant's audited financial statements also contained an extraordinary loss equal to the amount claimed. The stock purchases and extraordinary loss suggested that the claimant did suffer some loss of stock. In view of the above, the Panel has recommended compensation for this claim. However, the Panel has adjusted the amount recommended to account for the concerns identified above in relation to stock build-up, the cost of goods sold in 1990 and the normal obsolescence applicable to such goods.

43. As was the case in prior instalments of "E4" claims, most claims for loss of goods in transit related to goods that were in Kuwait on the day of Iraq's invasion and that were subsequently lost. Successful claimants were able to submit sufficient proof of payment for the goods and establish the ownership, existence and loss of the goods from certificates issued by the Kuwaiti port authorities or shipping agents.

44. The claims for loss of cash in this instalment did not raise any new legal or verification and valuation issues. Many claimants seeking compensation for cash losses sought to rely on witness statements from related parties without providing further evidence to substantiate their claims. Where claims for cash losses were not supported by sufficient contemporaneous evidence, establishing the possession and amount of cash held on 2 August 1990, the Panel has recommended no compensation.

45. The claims for loss of vehicles in this instalment did not raise any new legal or verification and valuation issues. Most claimants with loss of vehicle claims were able to establish their losses by submitting copies of deregistration certificates and additional documents such as post-liberation audited accounts and witness statements that substantiated the fact and circumstances of their losses.

46. The Panel's recommendations on tangible property, stock, cash and vehicle losses are summarized in annex II.

## D. Payment or relief to others

47. Five claimants in this instalment submitted claims for payment or relief to others aggregating KWD 215,703 (approximately USD 746,377).

48. The claims for payment or relief to others in this instalment did not raise any new legal or verification and valuation issues. When reviewing these claims for payment or relief to others, the Panel applied the approach and verification and valuation methodology described in earlier "E4" reports, such as in paragraphs 59-63 of the Fourth "E4" Report.

49. The Panel's recommendations on the payment or relief to others claims are summarized in annex II.

## E. Loss of profits

50. Nearly 90 per cent of the claimants in this instalment submitted claims for loss of profits aggregating KWD 10,266,059 (approximately USD 35,522,696).

51. Four significant legal and factual issues raised in the first instalment claims were also relevant to the claims in this instalment. These relate to the impact and assessment of (i) benefits received under the Government of Kuwait's post-liberation debt settlement programme, (ii) windfall or exceptional profits earned by claimants in the period immediately following the liberation of Kuwait, (iii) the indemnity period for loss of profits claims, and (iv) claims for loss of profits selectively based on profitable lines of business. The conclusions reached by the Panel in relation to these issues are set forth in paragraphs 161-193 of the First "E4" Report. The Panel has applied these conclusions in its considerations and recommendations for the loss of profits claims in this instalment.

52. Despite specific requests, some claimants in the thirteenth instalment did not provide annual accounts for the three financial years preceding and following the period of Iraq's invasion and occupation of Kuwait. The Panel noted that in some cases the failure to submit some accounts was sufficiently explained; for example, where the claimant had commenced trading in the

period between 1987 and 1990 or where the claimant had ceased trading following Iraq's invasion and occupation of Kuwait.

53. Loss of profits claims by businesses that failed to provide a full set of annual audited accounts for the relevant periods were regarded as presenting a "risk of overstatement", unless the failure to submit the accounts was sufficiently explained.

54. The verification and valuation methodology adopted by the Panel for loss of profits claims is stated in paragraphs 194-202 of the First "E4" Report.

55. Asdeka Sweets & Bakery asserted a claim for loss of profits. The claim was based on an estimate of the claimant's revenues and expenses. The claimant provided purchase and sales invoices dated in 1994 to support this estimate. In response to a request for financial statements, the claimant stated that it did not prepare any financial statements because its business was a small one and because it was exempt from submitting financial statements to Kuwait's Ministry of Commerce. The claimant did not submit any other historical financial records that allowed the Panel to determine with any certainty whether the claimant's business was historically profitable. As the claimant failed to submit sufficient evidence to demonstrate the circumstances and the amount of the claimed loss, the Panel has recommended no compensation for this loss of profits claim.

56. The Kuwait Germanco for Building Materials was incorporated in late 1989. This claimant filed a claim for loss of profits based on estimates of monthly production and profits. Insufficient information was available to establish the claimant's historical profitability. The financial statements provided in relation to operations prior to 2 August 1990 did not show any revenues, expenses or profits. The claimant did not submit any other evidence that allowed the Panel to determine the claimant's prior earnings or profits with reasonable certainty. Due to the insufficient evidence submitted, the Panel has recommended no compensation for this claim.

57. The Panel's recommendations on loss of profits claims are summarized in annex II.

## F. Receivables

58. Eight claimants in this instalment submitted claims for "bad debts" aggregating KWD 2,619,596 (approximately USD 9,064,346). Most of these claims were for amounts owed by businesses or individuals located in Kuwait prior to Iraq's invasion.

59. The claims for loss of receivables in this instalment did not raise any new legal or verification and valuation issues. As was the case in previous instalments of "E4" claims, most claimants sought compensation for debts that

remained uncollected because debtors had not returned to Kuwait after liberation. The Panel reiterates its determination on this matter as set out in paragraphs 209-210 of the First "E4" Report. Claims for debts that have become uncollectible as a result of Iraq's invasion and occupation of Kuwait must demonstrate, by documentary or other appropriate evidence, the nature and amount of debt in question and the circumstances that caused the debt to become uncollectible.

60. The thirteenth instalment claims for uncollectible receivables were verified and valued in the manner described in paragraphs 211-215 of the First "E4" Report.

61. As discussed above, the Panel recommends no compensation for claims that relied on the mere assertion that uncollected debts were ipso facto uncollectible because the debtors did not return to Kuwait. Most claimants failed to provide evidence to demonstrate that their debtors' inability to pay was a direct result of Iraq's invasion and occupation of Kuwait. This shortcoming was brought to the attention of the claimants, in the context of the additional information requested from claimants (see para. 17 above). While a number of responses were received from claimants, few satisfied the above criteria.

62. The Panel's recommendations on claims for receivables are summarized in annex II.

## G. Restart costs

63. Eight claimants in this instalment submitted claims for restart costs aggregating KWD 54,777 (approximately USD 189,540).

64. The amounts claimed as restart costs have been reviewed using the methodology described in paragraphs 221-223 of the First "E4" Report and paragraphs 86-91 of the Fourth "E4" Report.

65. Copri Construction Company W.L.L. asserted a claim for salary payments made to employees during the months of September, October and November 1991. To support its claim, the claimant provided payment vouchers and printouts from its computerised payroll system. However, the claimant did not submit evidence to demonstrate that these salary payments were incremental to regular business expenses. For this reason, the Panel found that the claimant had failed to establish that the claim represented a loss resulting directly from Iraq's invasion and occupation of Kuwait. The Panel has therefore recommended no compensation for this restart costs claim.

66. The Panel's recommendations on restart costs are summarized in annex II.

### H. Other losses

67. Seven claimants in this instalment submitted claims for other losses aggregating KWD 732,455 (approximately USD 2,534,446).

68. Arab Gulf Company for Modern Technology asserted a claim for losses related to computer software. Before Iraq's invasion of Kuwait the claimant stated that it incurred costs to acquire operating system software (e.g., UNIX and MS DOS) and to acquire and develop application software (e.g., for pay-roll, administration, etc.). The claimant intended to license the application software to multiple users and recover these costs. The claimant stated that as its main computer and software were stolen during Iraq's invasion and occupation of Kuwait, it could not recover the costs incurred (i.e., to acquire and develop software). The claimant therefore sought compensation for these software-related costs.

69. The claimant submitted a statement listing the costs claimed (e.g., employee salaries, printing costs, and translation costs related to developing the application software). The claimant also submitted a statement explaining how the software worked and a sample of various software-related contracts. The claimant's 1991 financial statements showed an extraordinary loss of software inventory equal to the amount claimed.

70. In relation to the development costs, the claimant did not submit sufficient evidence to demonstrate that it had incurred the costs claimed. For instance, although a significant portion of the claim related to manpower costs, no employee time-sheets were provided. Similarly, no invoices or payment receipts were provided to support the printing or translation costs listed. The claimant did not provide any evidence that allowed the Panel to determine the basis on which the individual costs claimed had been calculated or valued.

71. In relation to the claim for the operating system software, the claimant again provided no evidence of the costs incurred in acquiring the software. To the extent that the operating system software was included with the claimant's hardware, the Panel noted that it had recommended compensation for the claimant's loss of tangible property, based on the evidence provided by the claimant.

72. In view of the above, the Panel noted that the claimant failed to provide sufficient evidence to demonstrate the circumstances and amount of the claim for the software-related costs. The Panel has therefore recommended no compensation for this claim.

73. The Arab European Financial Management Company S.A.K. asserted a claim related to forward foreign exchange transactions that the claimant had entered into prior to Iraq's invasion of Kuwait. These transactions,

executed with foreign banks, gave rise to commitments by which the claimant would buy or sell fixed amounts of certain currencies at agreed exchange rates on specific dates between August and November 1990. For example, under one contract the claimant committed that on a certain date in September 1990 it would buy USD 1.5 million for FRF 8.5 million.

74. The claimant stated that as a result of Iraq's invasion and occupation of Kuwait it could not administer these contracts. The correspondent banks were unable to contact the claimant and closed out the agreements at the prevailing exchange rates on the dates the obligations fell due. As these rates were unfavourable to the claimant, when compared with the rates agreed in the forward contracts, the claimant incurred losses on the settlement of the contracts.

75. In the "Report and recommendations made by the Panel of Commissioners concerning the third instalment of 'E4' claims," the "E4" Panel of Commissioners discussed similar claims (S/AC.26/2000/6, paras. 36-38 and 42-46) and found that the losses incurred arose from the claimant's "inability to administer its operations in Kuwait after Iraq's invasion of Kuwait." Such losses were therefore a direct result of Iraq's invasion and occupation of Kuwait. The Governing Council approved these findings in decision 91 (S/AC.26/Dec. 91 (2000)).

76. The Panel concurs with these findings. In the present case the claimant also suffered a loss because of its inability to administer its operations in Kuwait after Iraq's invasion of Kuwait. This loss was therefore a direct result of Iraq's invasion and occupation of Kuwait.

77. The claimant submitted sufficient evidence to support the existence of the contracts and the rates obtained when the contracts were closed out by the correspondent banks. However, the Panel recommends that in valuing the loss, the claim should be adjusted to reflect the currency exchange rates approved by the Panel (as described in the First "E4" Report, at paragraphs 226-233) and to offset any "risk of overstatement" associated with normal fluctuations in foreign exchange markets and the nature of the operations.

78. Claims for "other losses" that have been dealt with in prior "E4" instalments were reviewed in the manner stated in earlier "E4" reports. (See, for example, the Fourth "E4" Report, para. 103 dealing with the treatment of prepaid expenses.)

79. The Panel's recommendations on other losses are summarized in annex II.

## V. OTHER ISSUES

### A. Applicable dates for currency exchange rate and interest

80. In relation to the applicable dates for currency exchange rate and interest, the Panel has adopted the approach discussed in paragraphs 226-233 of the First "E4" Report.

### B. Claim preparation costs

81. The Panel has been informed by the Executive Secretary of the Commission that the Governing Council intends to resolve the issue of claim preparation costs in the future. Accordingly, the Panel has made no recommendation with respect to compensation for claim preparation costs.

## VI. RECOMMENDED AWARDS

82. Based on the foregoing, the awards recommended by the Panel for claimants in the thirteenth instalment of "E4" claims are set out in annex I to this report. The underlying principles behind the Panel's recommendations on claims in this instalment are summarized in annex II to this report. All sums have been rounded to the nearest KWD and therefore the amounts may vary from the amount stated on Form E by one KWD.

Geneva, 21 December 2000

(*Signed*) Luiz Olavo Baptista
Chairman

(*Signed*) Jean Naudet
Commissioner

(*Signed*) Jianxi Wang
Commissioner

### Annex I

### Recommended awards for the thirteenth instalment of "E4" claims

### Reported by UNSEQ and UNCC claim number and claimant name

| UNSEQ Claim No. a/ | UNCC Claim No. | Claimant's name | Amount claimed (KWD) | Net amount claimed (KWD) b/ | Amount recommended (KWD) | Amount recommended (USD) |
|---|---|---|---|---|---|---|
| E-01112 | 4004219 | Grand House Commercial Company W.L.L. | 311,736 | 309,736 | 91,816 | 316,793 |
| E-01114 | 4004221 | Trading & Transportation Services Company W.L.L. | 144,944 | 144,944 | 70,010 | 241,859 |
| E-01115 | 4004222 | Gulf Decoration & Trading Co. W.L.L. | 54,643 | 53,393 | 7,730 | 26,724 |
| E-01116 | 4004223 | Al Essa Agricultural Co. W.L.L. | 311,210 | 261,000 | 151,192 | 523,156 |
| E-01117 | 4004224 | Al-Salem Chemical Services and Contracting Co. | 174,556 | 173,056 | 116,456 | 402,962 |
| E-01118 | 4004225 | Industrial Services and Supplies Company W.L.L. | 223,000 | 223,000 | 161,971 | 560,156 |
| E-01119 | 4004226 | Technological Development Co. | 11,016 | 11,016 | 8,513 | 29,457 |
| E-01120 | 4004227 | Shether Trading Group Company | 51,445 | 51,445 | 48,485 | 167,341 |
| E-01121 | 4004228 | Kuwait Environment Protection Society | 18,076 | 18,076 | 10,180 | 35,225 |
| E-01122 | 4004229 | Nawarah Al-Asli Restaurant Co. W.L.L. | 36,800 | 34,250 | 24,232 | 83,761 |
| E-01124 | 4004231 | Gulf Telecomplect Company W.L.L. | 143,284 | 141,284 | 114,965 | 397,549 |
| E-01125 | 4004233 | Saleh Al-Roomi Trd. & Cont. Co. W.L.L. | 317,969 | 313,969 | 255,561 | 882,988 |
| E-01126 | 4004234 | Sabah Al-Salim Co-operative Society | 1,222,306 | 1,220,806 | 654,394 | 2,264,339 |
| E-01127 | 4004235 | Al Wassel Trading Company | 23,745 | 22,932 | 17,280 | 59,792 |
| E-01128 | 4004236 | Al-Fahahil Co-operative Society | 852,121 | 850,121 | 181,159 | 625,981 |
| E-01129 | 4004237 | Ashraf and Malhotra Trading Limited Company | 521,091 | 470,139 | 277,069 | 958,514 |
| E-01130 | 4004238 | Mechanical Trading and Contracting Establishment Co. | 65,768 | 65,768 | 49,152 | 170,076 |
| E-01131 | 4004239 | Insulating Materials Plants | 700,117 | 694,967 | 500,600 | 1,731,648 |
| E-01132 | 4004240 | Al-Fadala Trading & Transport Co. | 173,381 | 171,381 | 56,951 | 197,058 |
| E-01133 | 4004241 | Behbehani Trading & International Transport Company W.L.L. | 352,164 | 352,164 | 214,352 | 741,702 |
| E-01134 | 4004242 | Al Qatami Building Materials Company | 307,981 | 300,481 | 219,806 | 760,456 |
| E-01135 | 4004243 | Hadiya Co-op. Society | 543,488 | 539,888 | 241,713 | 835,300 |
| E-01136 | 4004244 | Al Yarmouk Co-op. Society | 439,654 | 435,654 | 132,289 | 457,338 |
| E-01137 | 4004245 | Abdul Rahman Al Kandari General T. Comp. | 216,096 | 216,096 | 116,434 | 402,417 |

| UNSEQ Claim No. a/ | UNCC Claim No. | Claimant's name | Amount claimed (KWD) | Net amount claimed (KWD) b/ | Amount recommended (KWD) | Amount recommended (USD) |
|---|---|---|---|---|---|---|
| E-01138 | 4004246 | Al Jalal Trading Company W.L.L. | 1,291,547 | 1,291,547 | 856,447 | 2,962,566 |
| E-01140 | 4004248 | Sadeer Trading & Contracting Co. Limited Liability Company | 71,613 | 70,113 | 31,486 | 108,948 |
| E-01141 | 4004249 | Freon Products Company W.L.L. | 185,651 | 183,151 | 82,227 | 284,480 |
| E-01143 | 4004251 | Al Mizerae Trading Co. W.L.L. | 146,920 | 145,420 | 122,076 | 422,408 |
| E-01144 | 4004252 | Asdeka Sweets & Bakery | 27,070 | 26,570 | 1,517 | 5,249 |
| E-01145 | 4004253 | Al Jisr Co. for Building Materials & Contracts | 1,029,881 | 1,023,006 | 478,308 | 1,654,762 |
| E-01146 | 4004254 | Arab Fast Foods W.L.L. | 178,727 | 177,227 | 71,183 | 246,308 |
| E-01147 | 4004255 | Mohamed & Husain Hasan Al-Baghly W.L.L. | 786,143 | 785,443 | 328,191 | 1,134,964 |
| E-01148 | 4004256 | Bhasin W.L.L. Tailors Outfitters and Sports Goods Dealers | 309,648 | 307,148 | 235,219 | 813,824 |
| E-01150 | 4004258 | Kuwait Building Material Co. (K.S.C.), Closed | 349,334 | 349,334 | 152,921 | 529,129 |
| E-01151 | 4004259 | Al Kamal for Shipping Co. Abdal Aziz Saleh Al Shammeri | 180,760 | 180,260 | 97,148 | 335,537 |
| E-01153 | 4004261 | Grand Sahara Contracting Co. W.L.L. | 952,931 | 809,661 | 326,857 | 1,130,993 |
| E-01154 | 4004262 | Al Hadeer Trading & General Contracting Co. | 168,574 | 167,074 | 103,582 | 358,043 |
| E-01155 | 4004263 | Al Amar & Partners Elect. Co. | 233,992 | 232,992 | 131,965 | 455,942 |
| E-01157 | 4004265 | International Group for Equipment and Contracting, Saad Mohamed Al-Saad & Partners W.L.L. | 843,651 | 843,651 | 569,833 | 1,970,598 |
| E-01158 | 4004266 | Mohammed Taher Mohammad Al-Baghli and Partner General Trading and Contracting Co. | 181,647 | 181,647 | 130,701 | 452,253 |
| E-01160 | 4004268 | Ibrahim Al Naser Al Hajri & Sons Company W.L.L. | 258,934 | 257,434 | 86,515 | 298,922 |
| E-01161 | 4004269 | Sayed Ismail Behbehani Sons Co. | 444,025 | 442,905 | 206,985 | 716,211 |
| E-01162 | 4004270 | Khalid Al Zaid Al Khalid Trading & General Contracting Co. | 246,444 | 246,444 | 171,267 | 591,230 |
| E-01163 | 4004271 | Al-Mutaw Kuwaiti Group Trd. Cont. Co. | 49,641 | 49,641 | 19,476 | 67,323 |
| E-01164 | 4004272 | Abdul Rahim Al-Awadi & Partners Trading Company | 79,053 | 79,053 | 51,245 | 177,318 |
| E-01165 | 4004273 | Homa General Trading and Contracting Company W.L.L. | 237,010 | 235,510 | 80,809 | 279,616 |
| E-01166 | 4004274 | Hamad Saleh Al Hamad & Partners Company for General Trading & Contracting | 508,725 | 508,725 | 305,485 | 1,053,699 |

| UNSEQ Claim No. a/ | UNCC Claim No. | Claimant's name | Amount claimed (KWD) | Net amount claimed (KWD) b/ | Amount recommended (KWD) | Amount recommended (USD) |
|---|---|---|---|---|---|---|
| E-01168 | 4004276 | Al-Watan Sweet Company W.L.L. | 164,310 | 164,310 | 142,488 | 491,567 |
| E-01169 | 4004277 | Khalifa Daij El-Dabbous, Bros. & Partners | 976,097 | 974,097 | 769,639 | 2,662,308 |
| E-01170 | 4004278 | Behbehani Woolens Co. | 357,857 | 356,357 | 281,086 | 972,616 |
| E-01171 | 4004279 | Al-Khateeb Trading Group | 132,101 | 132,101 | 65,989 | 227,897 |
| E-01172 | 4004280 | Al-Amiry Trading & Contracting Company W.L.L. | 1,451,480 | 1,447,480 | 734,522 | 2,540,490 |
| E-01174 | 4004282 | Gaza Trading Bureau W.L.L. | 94,022 | 93,522 | 85,551 | 295,558 |
| E-01175 | 4004283 | Farajalla Press Agency Co. | 351,196 | 350,196 | 236,342 | 817,179 |
| E-01176 | 4004284 | Yali & Allayan Trading Company W.L.L. Kuwait | 939,898 | 938,573 | 391,493 | 1,353,963 |
| E-01178 | 4004286 | Bin Hamad Trading & Industrial | 70,366 | 68,366 | 54,934 | 190,018 |
| E-01179 | 4004287 | Al Jarallah Trading & Contracting Company | 326,023 | 326,023 | 0 | 0 |
| E-01180 | 4004288 | Al-Ostoura International Company for General Trading and Contracting | 163,665 | 147,712 | 70,816 | 244,700 |
| E-01181 | 4004289 | Snoo Noo Clothes and Accessories Company | 43,958 | 39,058 | 14,546 | 50,291 |
| E-01182 | 4004290 | Al Anhar Foodstuff Company | 746,558 | 671,855 | 248,555 | 859,636 |
| E-01183 | 4004291 | Amador Company W.L.L., A. Kashlan & S. S. A. Al-Rasheedy | 211,582 | 210,382 | 132,965 | 459,452 |
| E-01184 | 4004292 | Arab Commercial Enterprises W.L.L. | 57,259 | 52,259 | 19,365 | 66,937 |
| E-01185 | 4004293 | Gulf Building Material Company | 381,077 | 378,077 | 205,804 | 712,125 |
| E-01186 | 4004294 | Al Madadd Trading & Contracting Company (Former Al Fow Tradg. & Cont. Company) | 96,820 | 96,820 | 67,959 | 234,409 |
| E-01187 | 4004295 | Al-Nusif Cleaning Co. | 173,922 | 173,922 | 100,668 | 348,332 |
| E-01188 | 4004296 | Gulf Group for Mechanical & Electrical Works | 55,150 | 53,650 | 19,337 | 66,872 |
| E-01189 | 4004297 | Marzouk Abdulwahab Al-Dawood & Bros. for General Trading & Cont. Co. | 190,243 | 169,369 | 124,031 | 429,173 |
| E-01190 | 4004298 | Aptus Kuwait Company | 322,105 | 292,141 | 209,420 | 724,637 |
| E-01191 | 4004299 | Al Noor Optical Co. W.L.L. | 112,390 | 110,390 | 39,009 | 134,942 |
| E-01192 | 4004300 | Al Diwan United for Electrical & Plumbing Appliances | 1,691,773 | 1,691,773 | 687,805 | 2,379,736 |
| E-01193 | 4004301 | Arab Gulf Company for Modern Technology | 166,735 | 164,235 | 44,461 | 153,777 |
| E-01194 | 4004302 | Al-Taneeb Trading Company | 658,510 | 656,510 | 391,563 | 1,354,123 |

| UNSEQ Claim No. a/ | UNCC Claim No. | Claimant's name | Amount claimed (KWD) | Net amount claimed (KWD) b/ | Amount recommended (KWD) | Amount recommended (USD) |
|---|---|---|---|---|---|---|
| E-01196 | 4004304 | Deco Kuwait Company W.L.L. | 423,562 | 420,312 | 141,115 | 488,240 |
| E-01197 | 4004305 | Al-Zomurrdah Jewellery Company W.L.L. | 264,688 | 264,688 | 143,688 | 497,190 |
| E-01198 | 4004306 | Al-Aqsa Sweet Company W.L.L. | 69,155 | 69,155 | 32,992 | 114,159 |
| E-01199 | 4004307 | Al-Haramain General Trading Co. Limited Partnership | 77,384 | 76,134 | 60,681 | 209,493 |
| E-01200 | 4004308 | Bodour Al Khaleej Company Limited Partnership | 102,927 | 102,927 | 77,150 | 266,599 |
| E-01201 | 4004309 | Al Sedan Trading & Cont. Co. W.L.L. | 144,690 | 142,190 | 78,011 | 269,916 |
| E-01202 | 4004310 | Copri Construction Company W.L.L. | 896,727 | 829,723 | 494,875 | 1,711,988 |
| E-01203 | 4004311 | The National Paper and By-Products Company W.L.L. | 759,597 | 759,597 | 336,869 | 1,165,637 |
| E-01204 | 4004312 | Al-Zaher Trading Company with Limited Liability | 345,070 | 343,320 | 212,921 | 736,735 |
| E-01205 | 4004313 | Canar Trading & Contracting Co. | 110,632 | 110,032 | 38,650 | 133,408 |
| E-01206 | 4004314 | Al Edwany Company W.L.L. | 60,798 | 60,798 | 29,457 | 101,927 |
| E-01208 | 4004316 | Mass Consultant & Services Co. | 128,986 | 128,386 | 38,398 | 132,769 |
| E-01210 | 4004318 | Al Hossiny and Saleh Trading Co. W.L.L. | 332,372 | 332,372 | 89,730 | 310,484 |
| E-01211 | 4004319 | Shaheen Al Ghanim Roads & Bridges Cont. Co. W.L.L. | 505,100 | 502,100 | 325,002 | 1,124,574 |
| E-01212 | 4004320 | Homoud Al Zaid Al Khalid | 732,449 | 729,449 | 54,387 | 188,190 |
| E-01213 | 4004321 | Deema International General Trading Company W.L.L. | 386,863 | 384,363 | 169,440 | 585,495 |
| E-01214 | 4004322 | The Arab European Financial Management Co. S.A.K.C. | 1,409,839 | 1,409,839 | 120,162 | 415,785 |
| E-01215 | 4004323 | Al Ear and Asaker for Electric & Electronic Instruments Co. W.L.L. | 431,835 | 429,735 | 126,613 | 437,981 |
| E-01216 | 4004324 | Kuwait International Chemical Co. W.L.L. | 88,806 | 85,606 | 35,203 | 121,781 |
| E-01217 | 4004325 | Ghaida General Trading & Contracting Company W.L.L. | 508,017 | 508,017 | 403,302 | 1,395,509 |
| E-01218 | 4004326 | Al-Fadala Constructions Co. | 79,398 | 77,398 | 38,542 | 133,363 |
| E-01219 | 4004327 | Al Manea Travels Company Ltd. | 23,676 | 23,676 | 17,807 | 61,616 |
| E-01221 | 4004329 | Al-Rakhis Furnishing Co. | 82,598 | 82,598 | 58,608 | 202,791 |
| E-01222 | 4004330 | Al-Ahleia Electrical Company W.L.L. | 1,283,584 | 1,280,834 | 691,876 | 2,393,826 |
| E-01223 | 4004331 | The Kuwait Germanco for Building Materials | 1,106,385 | 1,106,385 | 309,194 | 1,069,875 |
| E-01224 | 4004332 | Hassan Al-Sarraj Sons Co. W.L.L. | 398,587 | 397,587 | 148,799 | 514,639 |
| E-01225 | 4004333 | Al Jaona'a Video & Electronic Appliances Company | 132,931 | 132,931 | 85,328 | 295,176 |
| E-01226 | 4004334 | Al Mizan Electronic Equipment Company | 80,556 | 79,056 | 21,413 | 74,081 |

| UNSEQ Claim No. a/ | UNCC Claim No. | Claimant's name | Amount claimed (KWD) | Net amount claimed (KWD) b/ | Amount recommended (KWD) | Amount recommended (USD) |
|---|---|---|---|---|---|---|
| E-01227 | 4004335 | Al-Fateheen Co. for Equipments Trading & General Contracting | 41,410 | 41,410 | 18,907 | 65,418 |
| E-01228 | 4004336 | Sadiq & Ali Co. W.L.L. | 89,869 | 88,569 | 51,041 | 176,366 |
| E-01229 | 4004337 | Asia Countries Steel Trading and Building | 206,520 | 205,020 | 177,872 | 615,185 |
| E-01230 | 4004338 | Kuwait Gypsum Manufacturing & Trading Company | 202,402 | 200,052 | 139,377 | 482,273 |
| E-01232 | 4004340 | Al Aqoul Sanitary & Electrical Contracting Company W.L.L. | 235,282 | 233,782 | 104,055 | 359,837 |
| E-01233 | 4004341 | Al-Atraf and Al-Salmi Company for Repairing Cars & Spare Parts | 201,372 | 201,372 | 38,677 | 133,830 |
| E-01235 | 4004343 | Palms Agro-Production Company | 2,280,178 | 2,280,178 | 1,217,842 | 4,213,986 |
| E-01236 | 4004344 | Abdul Rahman Mohamad Al-Bahar & Partners Co. W.L.L. | 800,589 | 797,679 | 788,503 | 2,725,602 |
| E-01237 | 4004345 | Mohammed Al-Subaiy Jewelleries Co. Mohammed Mayah Al-Subaiy & Sons | 569,173 | 568,173 | 482,774 | 1,669,242 |
| E-01238 | 4004346 | Ahed Mohammed Saleh Al-Khateeb & Partner for Perfumes & Accessories Co. | 1,391,984 | 1,391,984 | 566,039 | 1,957,501 |
| E-01239 | 4004347 | Shamlan & Ibrahim General Contracting | 45,293 | 37,497 | 6,950 | 24,048 |
| E-01240 | 4004348 | M/s. Dana & Berkeley Trading Co. W.L.L. | 1,027,613 | 1,024,613 | 339,936 | 1,176,249 |
| E-01241 | 4004349 | Al-Asfoor & Al-Khateeb Trading Co. W.L.L. | 2,435,108 | 2,435,108 | 1,032,788 | 3,573,661 |
| E-01242 | 4004350 | Al Dar Al Baida Electrical Equipment and Sports Materials Co. | 179,105 | 179,105 | 52,896 | 183,031 |
| E-01243 | 4004351 | Dinar Trading Co. | 51,579 | 50,079 | 46,891 | 162,253 |
| E-01244 | 4004352 | Shireen Optec Company | 70,124 | 67,274 | 38,059 | 131,692 |
| E-01245 | 4004353 | Al Entisar Jewellery Co. | 296,151 | 296,151 | 264,600 | 914,082 |
| E-01246 | 4004354 | The Golden Sail Trading & Contracting Company W.L.L. | 137,177 | 137,177 | 58,881 | 203,740 |
| E-01247 | 4004355 | Al-Ayoub Construction Materials Company W.L.L. | 148,784 | 148,784 | 85,929 | 296,903 |
| E-01251 | 4004359 | Al-Hassoun & Jarani Trading Company | 80,478 | 80,478 | 48,210 | 166,817 |
| E-01252 | 4004360 | Light & Sound Electronic Com. W.L.L. | 153,111 | 151,861 | 19,550 | 67,647 |
| E-01253 | 4004361 | Al Fadi Readymade Clothes & Luxuries Co. | 148,873 | 147,373 | 124,293 | 430,080 |
| E-01254 | 4004362 | Abdul Rahman Ali Al Omar Sons General Trading Co. | 94,457 | 92,957 | 33,737 | 116,426 |

| UNSEQ Claim No. a/ | UNCC Claim No. | Claimant's name | Amount claimed (KWD) | Net amount claimed (KWD) b/ | Amount recommended (KWD) | Amount recommended (USD) |
|---|---|---|---|---|---|---|
| E-01255 | 4004363 | Khaldeh Trading & General Contracting Company W.L.L. | 89,974 | 89,974 | 75,121 | 259,929 |
| E-01256 | 4004364 | Al Nassr International Co. for Nutritionists | 137,917 | 136,517 | 94,396 | 326,301 |
| E-01257 | 4004365 | Kuwait Company for Production of Packaging Materials | 213,713 | 213,713 | 96,913 | 334,438 |
| E-01258 | 4004366 | Hamad Falah Alajimi and Sons Trading Company | 42,398 | 37,422 | 22,557 | 78,019 |
| E-01259 | 4004367 | Al Rabiia and Sharour Company W.L.L. | 65,236 | 63,236 | 28,028 | 96,977 |
| E-01261 | 4004369 | Durrat Al Maidan General Trading Company | 82,689 | 80,189 | 14,626 | 50,568 |
| E-01262 | 4004370 | Khudair & Samawi Carpets, Furniture, Curtains Company W.L.L. | 531,452 | 531,452 | 348,676 | 1,206,491 |
| E-01263 | 4004371 | Orient Sports Equipment Co. Abdul Aziz Yacoob Al Hajiry & Partner | 457,080 | 455,426 | 281,124 | 972,737 |
| E-01264 | 4004372 | Al Thulathiya Al-Alimiah General Contracting | 232,843 | 209,574 | 127,227 | 440,232 |
| TOTAL | | | 49,620,755 | 48,972,087 | 24,708,789 | 85,458,541 |

a/ The UNSEQ number is the provisional claim number assigned to each claim by PAAC.

b/ The "Net amount claimed" is the original amount claimed less the amount claimed for claim preparation costs and interest. As set forth in paragraphs 80 and 81 of the report, the Panel has made no recommendation with regard to these items.

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Grand House Commercial Company W.L.L.
UNCC claim number: 4004219
UNSEQ number: E-01112

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of real property | 28,200 | 9,130 | Original loss of profits claim reclassified as loss of real property. Claim adjusted for depreciation, evidentiary shortcomings and failure to repair/replace. See paragraphs 34-37 of the report. |
| Loss of tangible property | 11,748 | 6,461 | Original loss of tangible property claim reclassified as loss of tangible property, stock, cash and vehicles. Claim adjusted for failure to repair/replace and for evidentiary shortcomings. See paragraphs 39-40 of the report. |
| Loss of stock | 162,273 | 0 | Insufficient evidence to substantiate claim. See paragraphs 39 and 41-43 of the report. |
| Loss of cash | 3,150 | 0 | Insufficient evidence to substantiate claim. See paragraphs 39 and 44 of the report. |
| Loss of vehicles | 2,731 | 0 | Insufficient evidence to substantiate claim. See paragraphs 39 and 45 of the report. |
| Loss of profits | 101,634 | 76,225 | Claim adjusted for evidentiary shortcomings. See paragraphs 50-57 of the report. |
| TOTAL | 309,736 | 91,816 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 2,000 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Trading & Transportation Services Company W.L.L. |
| UNCC claim number: | 4004221 |
| UNSEQ number: | E-01114 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 18,674 | 14,939 | Original loss of tangible property reclassified as loss of tangible property and loss of vehicles. Claim adjusted for failure to repair/replace. See paragraphs 39-40 of the report. |
| Loss of vehicles | 39,144 | 19,420 | Claim adjusted to reflect M.V.V. Table values and for evidentiary shortcomings. See paragraphs 39 and 45 of the report. |
| Loss of profits | 87,126 | 35,651 | Claim adjusted to reflect historical records for a 12 month indemnity period and for evidentiary shortcomings. See paragraphs 50-57 of the report. |
| TOTAL | 144,944 | 70,010 | |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Gulf Decoration & Trading Co. W.L.L.
UNCC claim number: 4004222
UNSEQ number: E-01115

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---:|---:|---|
| Loss of stock | 39,561 | 5,604 | Original loss of tangible property claim reclassified as loss of stock. Claim adjusted for stock build-up, obsolescence and evidentiary shortcomings. See paragraphs 39 and 41-43 of the report. |
| Loss of profits | 13,832 | 2,126 | Claim adjusted to reflect historical results for a 12 month indemnity period and for windfall profits. See paragraphs 50-57 of the report. |
| TOTAL | 53,393 | 7,730 | |

| | | | |
|---|---:|---:|---|
| Claim preparation costs | 1,250 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

## Annex II

### Recommended awards for thirteenth instalment of "E4" claims

### Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Al Essa Agricultural Co. W.L.L. |
| UNCC claim number: | 4004223 |
| UNSEQ number: | E-01116 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of real property | 17,000 | 7,760 | Claim adjusted for maintenance and evidentiary shortcomings. See paragraphs 34-37 of the report. |
| Loss of tangible property | 45,041 | 44,947 | Original loss of tangible property claim reclassified as loss of tangible property and loss of stock. Claim adjusted for evidentiary shortcomings. See paragraphs 39-40 of the report. |
| Loss of stock | 198,959 | 98,485 | Claim adjusted for obsolescence and evidentiary shortcomings. See paragraphs 39 and 41-43 of the report. |
| TOTAL | 261,000 | 151,192 | |

| | | | |
|---|---|---|---|
| Interest | 50,210 | n.a. | Governing Council's determination pending. See paragraph 80 of the report. |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Al-Salem Chemical Services and Contracting Co.
UNCC claim number: 4004224
UNSEQ number: E-01117

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 1,473 | 918 | Original tangible property claim reclassified as loss of tangible property, loss of stock and loss of vehicles. Claim adjusted for depreciation and failure to repair/replace. See paragraphs 39-40 of the report. |
| Loss of stock | 170,483 | 114,638 | Stock and goods in transit claims adjusted for obsolescence and evidentiary shortcomings. See paragraphs 39 and 41-43 of the report. |
| Loss of vehicles | 1,100 | 900 | Claim adjusted to reflect M.V.V. Table values. See paragraphs 39 and 45 of the report. |
| TOTAL | 173,056 | 116,456 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 1,500 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Industrial Services and Supplies Company W.L.L. |
| UNCC claim number: | 4004225 |
| UNSEQ number: | E-01118 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 183,000 | 134,782 | Original loss of tangible property claim reclassified as loss of stock. Claim adjusted for evidentiary shortcomings and obsolescence. See paragraphs 39 and 41-43 of the report. |
| Loss of profits | 40,000 | 27,189 | Claim adjusted for evidentiary shortcomings and windfall profits. See paragraphs 50-57 of the report. |
| TOTAL | 223,000 | 161,971 | |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Technological Development Co.
UNCC claim number: 4004226
UNSEQ number: E-01119

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of real property | 9,000 | 7,200 | Claim adjusted for maintenance. See paragraphs 34-37 of the report. |
| Loss of tangible property | 2,016 | 1,313 | Claim adjusted for evidentiary shortcomings, depreciation and failure to repair/replace. See paragraphs 39-40 of the report. |
| TOTAL | 11,016 | 8,513 | |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Shether Trading Group Company
UNCC claim number: 4004227
UNSEQ number: E-01120

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 12,385 | 9,425 | Claim adjusted for depreciation and failure to repair/replace. See paragraphs 39-40 of the report. |
| Loss of profits | 39,060 | 39,060 | Claim recommended in full. See paragraphs 50-57 of the report. |
| TOTAL | 51,445 | 48,485 | |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Kuwait Environment Protection Society
UNCC claim number: 4004228
UNSEQ number: E-01121

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of real property | 1,640 | 1,042 | Claim adjusted for maintenance. See paragraphs 34-37 of the report. |
| Loss of tangible property | 14,333 | 7,035 | Original loss of tangible property claim reclassified as loss of tangible property and loss of vehicles. Tangible property claim adjusted for depreciation and evidentiary shortcomings. See paragraphs 39-40 of the report. |
| Loss of vehicles | 2,103 | 2,103 | Claim recommended in full. See paragraphs 39 and 45 of the report. |
| TOTAL | 18,076 | 10,180 | |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Nawarah Al-Asli Restaurant Co. W.L.L.
UNCC claim number: 4004229
UNSEQ number: E-01122

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of profits | 34,250 | 24,232 | Claim adjusted to reflect historical results and for windfall profits. See paragraphs 50-57 of the report. |
| TOTAL | 34,250 | 24,232 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 2,550 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Gulf Telecomplect Company W.L.L. |
| UNCC claim number: | 4004231 |
| UNSEQ number: | E-01124 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 115,730 | 91,746 | Original tangible property claim reclassified as loss of stock. Claim adjusted for stock build-up and obsolescence. See paragraphs 39 and 41-43 of the report. |
| Loss of profits | 25,554 | 23,219 | Claim adjusted to reflect historical results for a 12 month indemnity period. See paragraphs 50-57 of the report. |
| TOTAL | 141,284 | 114,965 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 2,000 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Saleh Al-Roomi Trd. & Cont. Co. W.L.L.
UNCC claim number: 4004233
UNSEQ number: E-01125

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 182.844 | 126,580 | Original tangible property claim reclassified as loss of stock and loss of vehicles. Stock claim adjusted for stock build-up and obsolescence. See paragraphs 39 and 41-43 of the report. |
| Loss of vehicles | 11,780 | 9,636 | Claim adjusted to reflect M.V.V. Table values. See paragraphs 39 and 45 of the report. |
| Loss of profits | 119,345 | 119,345 | Claim recommended in full. See paragraphs 50-57 of the report. |
| TOTAL | 313,969 | 255,561 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 4,000 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Sabah Al-Salim Co-operative Society
UNCC claim number: 4004234
UNSEQ number: E-01126

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 90,746 | 67,998 | Original tangible property claim reclassified as loss of tangible property, stock, vehicles and other loss not categorised. Loss due to restart costs claim reclassified as loss of tangible property. Tangible property claim adjusted for maintenance. See paragraphs 39-40 of the report. |
| Loss of stock | 664,287 | 207,934 | Claim adjusted for stock build-up, obsolescence and evidentiary shortcomings. See paragraphs 39 and 41-43 of the report. |
| Loss of vehicles | 17,100 | 10,052 | Claim adjusted to reflect M.V.V. Table values. See paragraphs 39 and 45 of the report. |
| Loss of profits | 147,560 | 110,670 | Claim adjusted for windfall profits. See paragraphs 50-57 of the report. |
| Other loss not categorised | 301,113 | 257,740 | Claim adjusted for evidentiary shortcomings. See paragraphs 67-79 of the report. |
| TOTAL | 1,220,806 | 654,394 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 1,500 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Al Wassel Trading Company
UNCC claim number: 4004235
UNSEQ number: E-01127

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 5,435 | 4,157 | Original loss of tangible property claim reclassified as loss of stock. Claim adjusted for obsolescence and evidentiary shortcomings. See paragraphs 39 and 41-43 of the report. |
| Loss of profits | 17,497 | 13,123 | Claim adjusted for evidentiary shortcomings. See paragraphs 50-57 of the report. |
| TOTAL | 22,932 | 17,280 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 813 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Al-Fahahil Co-operative Society |
| UNCC claim number: | 4004236 |
| UNSEQ number: | E-01128 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 65,890 | 21,849 | Original loss of tangible property claim reclassified as loss of tangible property, stock, profits and other loss not categorised. Original restart costs claim reclassified as loss of tangible property. Tangible property claim adjusted for evidentiary shortcomings and depreciation. See paragraphs 39-40 of the report. |
| Loss of stock | 511,327 | 58,517 | Claim adjusted for evidentiary shortcomings, stock build-up and obsolescence. See paragraphs 39 and 41-43 of the report. |
| Loss of vehicles | 4 | 0 | Insufficient evidence to substantiate claim. See paragraphs 39 and 45 of the report. |
| Payment or relief to others | 33,291 | 0 | Insufficient evidence to substantiate claim. See paragraph 48 of the report. |
| Loss of profits | 233,520 | 99,809 | Claim adjusted for evidentiary shortcomings and for windfall profits. See paragraphs 50-57 of the report. |
| Bad debts | 3,520 | 0 | Insufficient evidence to substantiate claim. See paragraphs 58-62 of the report. |
| Other loss not categorised | 2,569 | 984 | Claim adjusted for evidentiary shortcomings and exchange rates. See paragraphs 67-79 of the report. |
| TOTAL | 850,121 | 181,159 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 2,000 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Ashraf and Malhothra Trading Limited Company
UNCC claim number: 4004237
UNSEQ number: E-01129

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 8,492 | 6,446 | Original loss of tangible property claim reclassified as loss of tangible property, stock and vehicles. Tangible property claim adjusted for depreciation and failure to repair/replace. See paragraphs 39-40 of the report. |
| Loss of stock | 433,187 | 248,994 | Stock claim adjusted for stock build-up and obsolescence and evidentiary shortcomings. Goods in transit claim adjusted for evidentiary shortcomings and obsolescence. See paragraphs 39 and 41-43 of the report. |
| Loss of vehicles | 3,200 | 3,107 | Claim adjusted to reflect M.V.V. Table values. See paragraphs 39 and 45 of the report. |
| Loss of profits | 25,260 | 18,522 | Claim adjusted to reflect historical results and for windfall profits. See paragraphs 50-57 of the report. |
| TOTAL | 470,139 | 277,069 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 1,000 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |
| Interest | 49,952 | n.a. | Governing Council's determination pending. See paragraph 80 of the report. |

## Annex II

### Recommended awards for thirteenth instalment of "E4" claims

### Reported by claimant name and category of loss

Claimant's name: Mechanical Trading and Contracting Establishment Co.
UNCC claim number: 4004238
UNSEQ number: E-01130

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 51,203 | 39,863 | Original loss of tangible property claim reclassified as loss of stock and loss of vehicles. Stock claim adjusted for stock build-up and obsolescence. See paragraphs 39 and 41-43 of the report. |
| Loss of vehicles | 992 | 963 | Claim adjusted to reflect M.V.V. Table values. See paragraphs 39 and 45 of the report. |
| Loss of profits | 13,573 | 8,326 | Claim adjusted to reflect historical results and for evidentiary shortcomings. See paragraphs 50-57 of the report. |
| TOTAL | 65,768 | 49,152 | |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| **Claimant's name**: | Insulating Materials Plants |
| **UNCC claim number**: | 4004239 |
| **UNSEQ number**: | E-01131 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 23,074 | 18,713 | Original loss of tangible property claim reclassified as loss of tangible property, stock and vehicles. Tangible property claim adjusted for depreciation. See paragraphs 39-40 of the report. |
| Loss of stock | 428,938 | 328,137 | Claim adjusted for obsolescence and evidentiary shortcomings. See paragraphs 39 and 41-43 of the report. |
| Loss of vehicles | 5,475 | 5,475 | Claim recommended in full. See paragraphs 39 and 45 of the report. |
| Loss of profits | 237,480 | 148,275 | Claim adjusted to reflect historical results and for windfall profits. See paragraphs 50-57 of the report. |
| TOTAL | 694,967 | 500,600 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 5,150 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Al-Fadala Trading & Transport Co. |
| UNCC claim number: | 4004240 |
| UNSEQ number: | E-01132 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 115,626 | 28,906 | Original loss of real property claim reclassified as loss of tangible property, stock and vehicles. Tangible property claim adjusted for evidentiary shortcomings and failure to repair/replace. See paragraphs 39-40 of the report. |
| Loss of stock | 30,127 | 23,510 | Claim adjusted for evidentiary shortcomings and obsolescence. See paragraphs 39 and 41-43 of the report. |
| Loss of vehicles | 8,000 | 3,350 | Claim adjusted to reflect M.V.V. Table values. See paragraphs 39 and 45 of the report. |
| Loss of profits | 17,628 | 1,185 | Claim adjusted to reflect historical results and for evidentiary shortcomings. See paragraphs 50-57 of the report. |
| TOTAL | 171,381 | 56,951 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 2,000 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

**Claimant's name**: Behbehani Trading & International Transport Company W.L.L.
**UNCC claim number**: 4004241
**UNSEQ number**: E-01133

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 309,100 | 210,188 | Original loss of tangible property claim reclassified as loss of stock. Stock claim adjusted for obsolescence and evidentiary shortcomings. See paragraphs 39 and 41-43 of the report. |
| Loss of profits | 43,064 | 4,164 | Claim adjusted to reflect historical results and for evidentiary shortcomings. See paragraphs 50-57 of the report. |
| TOTAL | 352,164 | 214,352 | |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Al Qatami Building Materials Company |
| UNCC claim number: | 4004242 |
| UNSEQ number: | E-01134 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of real property | 758 | 758 | Original loss of tangible property claim reclassified as loss of real property, tangible property, stock, cash and vehicles. Real property claim recommended in full. See paragraphs 34-37 of the report. |
| Loss of tangible property | 43,379 | 34,157 | Claim adjusted for maintenance and evidentiary shortcomings. See paragraphs 39-40 of the report. |
| Loss of stock | 17,016 | 5,251 | Claim adjusted for stock build-up, obsolescence and evidentiary shortcomings. See paragraphs 39 and 41-43 of the report. |
| Loss of cash | 32,838 | 32,838 | Claim recommended in full. See paragraphs 39 and 44 of the report. |
| Loss of vehicles | 134,000 | 113,900 | Claim adjusted to reflect M.V.V. Table values and for evidentiary shortcomings. See paragraphs 39 and 45 of the report. |
| Loss of profits | 72,490 | 32,902 | Claim adjusted to reflect historical results and for windfall profits. See paragraphs 50-57 of the report. |
| TOTAL | 300,481 | 219,806 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 7,500 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Hadiya Co-op. Society |
| UNCC claim number: | 4004243 |
| UNSEQ number: | E-01135 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 10,492 | 5,619 | Original loss of tangible property claim reclassified as loss of tangible property, stock and other loss not categorised. Tangible property claim adjusted for depreciation and maintenance. See paragraphs 39-40 of the report. |
| Loss of stock | 181,046 | 54,733 | Claim adjusted for evidentiary shortcomings and obsolescence. See paragraphs 39 and 41-43 of the report. |
| Payment or relief to others | 95,424 | 0 | Insufficient evidence to substantiate claim. See paragraph 48 of the report. |
| Loss of profits | 120,342 | 98,496 | Claim adjusted to reflect historical results for a 12 month indemnity period. See paragraphs 50-57 of the report. |
| Other loss not categorised | 132,584 | 82,865 | Claim adjusted for evidentiary shortcomings. See paragraphs 67-79 of the report. |
| TOTAL | 539,888 | 241,713 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 3,600 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

## Annex II

### Recommended awards for thirteenth instalment of "E4" claims

### Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Al Yarmouk Co-op. Society |
| UNCC claim number: | 4004244 |
| UNSEQ number: | E-01136 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 243,728 | 88,619 | Original loss of tangible property claim reclassified as loss of stock and other loss not categorised. Stock claim adjusted for obsolescence and evidentiary shortcomings. See paragraphs 39 and 41-43 of the report. |
| Payment or relief to others | 52,270 | 0 | Insufficient evidence to substantiate claim. See paragraph 48 of the report. |
| Loss of profits | 54,664 | 37,425 | Claim adjusted to reflect historical results and for windfall profits. See paragraphs 50-57 of the report. |
| Other loss not categorised | 84,992 | 6,245 | Claim for Iraqi dinars adjusted for evidentiary shortcomings. Insufficient evidence to substantiate claim for Kuwaiti dinars. See paragraphs 67-79 of the report. |
| TOTAL | 435,654 | 132,289 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 4,000 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Abdul Rahman Al Kandari General T. Comp. |
| UNCC claim number: | 4004245 |
| UNSEQ number: | E-01137 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 32,637 | 16,543 | Original loss of tangible property claim reclassified as loss of tangible property and loss of stock. Tangible property claim adjusted for depreciation and failure to repair/replace. See paragraphs 39-40 of the report. |
| Loss of stock | 105,309 | 45,936 | Claim adjusted for stock build-up and obsolescence. See paragraphs 39 and 41-43 of the report. |
| Loss of profits | 78,150 | 53,955 | Claim adjusted to reflect historical results for an 11 month indemnity period and for windfall profits. See paragraphs 50-57 of the report. |
| TOTAL | 216,096 | 116,434 | |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Al Jalal Trading Company W.L.L.
UNCC claim number: 4004246
UNSEQ number: E-01138

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 1,140,865 | 772,459 | Original loss of tangible property claim reclassified as loss of stock. Claim adjusted for stock build-up, obsolescence and evidentiary shortcomings. See paragraphs 39 and 41-43 of the report. |
| Loss of profits | 150,682 | 83,988 | Claim adjusted to reflect historical results for a 12 month indemnity period and for evidentiary shortcomings. See paragraphs 50-57 of the report. |
| TOTAL | 1,291,547 | 856,447 | |

Annex II

Recommended awards for thirteenth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Sadeer Trading & Contracting Co. Limited Liability Company
UNCC claim number: 4004248
UNSEQ number: E-01140

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of real property | 11,782 | 1,186 | Claim adjusted for evidentiary shortcomings and maintenance. See paragraphs 34-37 of the report. |
| Loss of tangible property | 2,312 | 1,156 | Original loss of tangible property claim reclassified as loss of tangible property and loss of stock. Tangible property claim adjusted for depreciation. See paragraphs 39-40 of the report. |
| Loss of stock | 30,844 | 20,974 | Claim adjusted for obsolescence and evidentiary shortcomings. See paragraphs 39 and 41-43 of the report. |
| Loss of profits | 13,500 | 0 | Original payment or relief to others claim reclassified as loss of profit and loss due to restart costs. Loss of profits claim adjusted to reflect historical results. See paragraphs 50-57 of the report. |
| Restart costs | 11,675 | 8,170 | Claim adjusted for evidentiary shortcomings. See paragraphs 63-66 of the report. |
| TOTAL | 70,113 | 31,486 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 1,500 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Freon Products Company W.L.L. |
| UNCC claim number: | 4004249 |
| UNSEQ number: | E-01141 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 14,358 | 9,256 | Original loss of tangible property claim reclassified as loss of tangible property and stock. Tangible property claim adjusted for evidentiary shortcomings, maintenance, depreciation and failure to repair/replace. See paragraphs 39-40 of the report. |
| Loss of stock | 25,800 | 15,375 | Claim adjusted for stock build-up and obsolescence. See paragraphs 39 and 41-43 of the report. |
| Loss of profits | 21,078 | 15,808 | Claim adjusted for windfall profits. See paragraphs 50-57 of the report. |
| Bad debts | 121,915 | 41,788 | Claim adjusted for evidentiary shortcomings. See paragraphs 58-62 of the report. |
| TOTAL | 183,151 | 82,227 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 2,500 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Al Mizerae Trading Co. W.L.L. |
| UNCC claim number: | 4004251 |
| UNSEQ number: | E-01143 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 5,700 | 4,560 | Original tangible property claim reclassified as loss of tangible property and stock. Tangible property claim adjusted for evidentiary shortcomings. See paragraphs 19-40 of the report. |
| Loss of stock | 134,884 | 117,516 | Claim adjusted for obsolescence. See paragraphs 19 and 41-43 of the report. |
| Loss of profits | 4,836 | 0 | Claim adjusted to reflect historical results. See paragraphs 50-57 of the report. |
| TOTAL | 145,420 | 122,076 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 1,500 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

| Claimant's name: | Asdeka Sweets & Bakery |
|---|---|
| UNCC claim number: | 4004252 |
| UNSEQ number: | E-01144 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 2,570 | 1,517 | Claim adjusted for maintenance and depreciation. See paragraphs 39-40 of the report. |
| Loss of profits | 24,000 | 0 | Insufficient evidence to substantiate claim. See paragraph 55 of the report. See paragraphs 50-57 of the report. |
| TOTAL | 26,570 | 1,517 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 500 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

Annex II

Recommended awards for thirteenth instalment of "E4" claims

Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Al Jisr Co. for Building Materials & Contracts |
| UNCC claim number: | 4004253 |
| UNSEQ number: | E-01145 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 894,569 | 430,725 | Original tangible property claim reclassified as loss of stock and vehicles. Stock claim adjusted for stock build-up, obsolescence and evidentiary shortcomings. Insufficient evidence to substantiate claim for loss of goods in transit. See paragraphs 39 and 41-43 of the report. |
| Loss of vehicles | 26,735 | 21,701 | Claim adjusted to reflect M.V.V. Table values. See paragraphs 39 and 45 of the report. |
| Loss of profits | 98,058 | 25,882 | Claim adjusted to reflect historical results. See paragraphs 50-57 of the report. |
| Other loss not categorised | 3,644 | 0 | Original other loss not categorised claim reclassified as loss of stock and other loss not categorised. Insufficient evidence to substantiate claim for other loss not categorised. See paragraphs 67-79 of the report. |
| TOTAL | 1,023,006 | 478,308 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 6,875 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Arab Fast Foods W.L.L. |
| UNCC claim number: | 4004254 |
| UNSEQ number: | E-01146 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 84,221 | 58,381 | Original tangible property claim reclassified as loss of tangible property, stock, cash and vehicles. Tangible property claim adjusted for depreciation and failure to repair/replace. See paragraphs 39-40 of the report. |
| Loss of stock | 49,964 | 12,098 | Claim adjusted for evidentiary shortcomings and obsolescence. See paragraphs 39 and 41-43 of the report. |
| Loss of cash | 440 | 0 | Insufficient evidence to substantiate claim. See paragraphs 39 and 44 of the report. |
| Loss of vehicles | 704 | 704 | Claim recommended in full. See paragraphs 39 and 45 of the report. |
| Payment or relief to others | 31,000 | 0 | Insufficient evidence to substantiate claim. See paragraph 48 of the report. |
| Loss of profits | 10,898 | 0 | Claim adjusted to reflect historical results. See paragraphs 50-57 of the report. |
| TOTAL | 177,227 | 71,183 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 1,500 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

## Annex II

### Recommended awards for thirteenth instalment of "E4" claims

### Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | **Mohamed & Husain Hasan Al-Baghly W.L.L.** |
| UNCC claim number: | 4004255 |
| UNSEQ number: | E-01147 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---:|---:|---|
| Loss of stock | 726,527 | 269,275 | Original tangible property claim reclassified as loss of stock. Stock claim adjusted for stock build-up, obsolescence and evidentiary shortcomings. See paragraphs 39 and 41-43 of the report. |
| Loss of profits | 58,916 | 58,916 | Claim recommended in full. See paragraphs 50-57 of the report. |
| TOTAL | 785,443 | 328,191 | |

| | | | |
|---|---:|---:|---|
| Claim preparation costs | 700 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Bhasin W.L.L. Tailors Outfitters and Sports Goods Dealers
UNCC claim number: 4004256
UNSEQ number: E-01148

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 276,288 | 212,074 | Original tangible property claim reclassified as loss of stock. Stock claim adjusted for stock build-up and obsolescence. See paragraphs 39 and 41-43 of the report. |
| Loss of profits | 30,860 | 23,145 | Claim adjusted for windfall profits. See paragraphs 50-57 of the report. |
| TOTAL | 307,148 | 235,219 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 2,500 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

**Claimant's name:** Kuwait Building Material Co. (K.S.C.), Closed

**UNCC claim number:** 4004258

**UNSEQ number:** E-01150

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of real property | 35,640 | 18,548 | Claim adjusted for depreciation and maintenance. See paragraphs 34-37 of the report. |
| Loss of stock | 213,281 | 81,570 | Original tangible property claim reclassified as loss of stock and vehicles. Stock claim adjusted for stock build-up, obsolescence and evidentiary shortcomings. See paragraphs 39 and 41-43 of the report. |
| Loss of vehicles | 47,900 | 39,900 | Claim adjusted to reflect M.V.V. Table values. See paragraphs 39 and 45 of the report. |
| Loss of profits | 52,513 | 12,903 | Claim adjusted to reflect historical results and for windfall profits. See paragraphs 50-57 of the report. |
| TOTAL | 349,334 | 152,921 | |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Al Kamal for Shipping Co. Abdal Aziz Saleh Al Shammeri |
| UNCC claim number: | 4004259 |
| UNSEQ number: | E-01151 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of vehicles | 110,000 | 40,880 | Original tangible property claim reclassified as loss of vehicles. See paragraphs 39 and 45 of the report. |
| Loss of profits | 70,260 | 56,268 | Claim adjusted to reflect historical results for a twelve month indemnity period. See paragraphs 50-57 of the report. |
| TOTAL | 180,260 | 97,148 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 500 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Grand Sahara Contracting Co. W.L.L.
UNCC claim number: 4004261
UNSEQ number: E-01153

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of contract | 160,000 | 88,000 | Claim adjusted for evidentiary shortcomings. See paragraphs 28-33 of the report. |
| Loss of real property | 25,153 | 13,410 | Claim adjusted for depreciation and maintenance. See paragraphs 34-37 of the report. |
| Loss of tangible property | 355,008 | 151,227 | Original tangible property claim reclassified as loss of contracts, tangible property and vehicles. Tangible property claim adjusted for depreciation, maintenance, failure to repair/replace and evidentiary shortcomings. See paragraphs 39-40 of the report. |
| Loss of vehicles | 269,384 | 74,220 | Claim adjusted for evidentiary shortcomings and to reflect M.V.V. Table values. See paragraphs 39 and 45 of the report. |
| Loss of profits | 116 | 0 | Part of original claim for preparation costs reclassified as loss of profits. Insufficient evidence to substantiate claim. See paragraphs 50-57 of the report. |
| TOTAL | 809,661 | 326,857 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 1,099 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |
| Interest | 142,171 | n.a. | Governing Council's determination pending. See paragraph 80 of the report. |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Al Hadeer Trading & General Contracting Co. |
| UNCC claim number: | 4004262 |
| UNSEQ number: | E-01154 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 43,848 | 41,517 | Original tangible property claim reclassified as loss of tangible property and stock. Tangible property claim adjusted for failure to repair/replace. See paragraphs 39-40 of the report. |
| Loss of stock | 77,832 | 28,020 | Claim adjusted for evidentiary shortcomings and obsolescence. See paragraphs 39 and 41-43 of the report. |
| Loss of profits | 45,394 | 34,045 | Claim adjusted for evidentiary shortcomings. See paragraphs 50-57 of the report. |
| TOTAL | 167,074 | 103,582 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 1,500 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

# Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Al Amar & Partners Elect. Co. |
| UNCC claim number: | 4004263 |
| UNSEQ number: | E-01155 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 170,452 | 69,425 | Original tangible property claim reclassified as loss of stock. Stock claim adjusted for stock build-up and evidentiary shortcomings. See paragraphs 39 and 41-43 of the report. |
| Loss of profits | 62,540 | 62,540 | Claim recommended in full. See paragraphs 50-57 of the report. |
| TOTAL | 232,992 | 131,965 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 1,000 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: International Group for Equipment and Contracting, Saad Mohamed Al-Saad & Partners W.L.L.
UNCC claim number: 4004265
UNSEQ number: E-01157

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 5,447 | 5,320 | Original tangible property claim reclassified as loss of tangible property, stock and vehicles. Tangible property claim adjusted for depreciation. See paragraphs 39-40 of the report. |
| Loss of stock | 28,945 | 25,138 | Claim for goods in transit adjusted for exchange rate variations and obsolescence. See paragraphs 39 and 41-43 of the report. |
| Loss of vehicles | 7,767 | 6,602 | Claim adjusted for evidentiary shortcomings. See paragraphs 39 and 45 of the report. |
| Loss of profits | 104,426 | 104,426 | Claim recommended in full. See paragraphs 50-57 of the report. |
| Bad debts | 697,066 | 428,347 | Claim adjusted for evidentiary shortcomings. See paragraphs 58-62 of the report. |
| TOTAL | 843,651 | 569,833 | |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Mohammed Taher Mohammad Al-Baghli and Partner General Trading and Contracting Co.
UNCC claim number: 4004266
UNSEQ number: E-01158

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 140,039 | 112,031 | Original tangible property claim reclassified as loss of stock. Stock claim adjusted for obsolescence. See paragraphs 39 and 41-43 of the report. |
| Loss of profits | 41,608 | 18,670 | Claim adjusted to reflect historical results, for evidentiary shortcomings and windfall profits. See paragraphs 50-57 of the report. |
| TOTAL | 181,647 | 130,701 | |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Ibrahim Al Naser Al Hajri & Sons Company W.L.L.
UNCC claim number: 4004268
UNSEQ number: E-01160

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 3,228 | 1,525 | Original tangible property claim reclassified as loss of tangible property, stock and vehicles. Tangible property claim adjusted for depreciation, evidentiary shortcomings and failure to repair/replace. See paragraphs 39-40 of the report. |
| Loss of stock | 89,357 | 32,077 | Claim for obsolescence and evidentiary shortcomings. See paragraphs 39 and 41-43 of the report. |
| Loss of vehicles | 2,500 | 2,500 | Claim recommended in full. See paragraphs 39 and 45 of the report. |
| Loss of profits | 162,349 | 50,413 | Claim adjusted to reflect historical results. See paragraphs 50-57 of the report. |
| TOTAL | 257,434 | 86,515 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 1,500 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Sayed Ismail Behbehani Sons Co. |
| UNCC claim number: | 4004269 |
| UNSEQ number: | E-01161 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 425,615 | 206,985 | Original tangible property claim reclassified as loss of stock. Stock claim adjusted for stock build-up, obsolescence and evidentiary shortcomings. Antiques claim adjusted for evidentiary shortcomings. See paragraphs 39 and 41-43 of the report. |
| Loss of profits | 17,290 | 0 | Claim adjusted to reflect historical results. See paragraphs 50-57 of the report. |
| TOTAL | 442,905 | 206,985 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 1,120 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Khalid Al Zaid Al Khalid Trading & General Contracting Co.
UNCC claim number: 4004270
UNSEQ number: E-01162

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of real property | 8,762 | 4,655 | Original real property claim reclassified as loss of stock, restart costs and profits. Portion of original restart costs claim reclassified as loss of real property. Real property claim adjusted for evidentiary shortcomings, depreciation and maintenance. See paragraphs 34-37 of the report. |
| Loss of tangible property | 387 | 387 | Claim recommended in full. See paragraphs 39-40 of the report. |
| Loss of stock | 4,910 | 1,571 | Claim adjusted for obsolescence and evidentiary shortcomings. See paragraphs 39 and 41-43 of the report. |
| Loss of vehicles | 4,221 | 3,588 | Claim adjusted for evidentiary shortcomings. See paragraphs 39 and 45 of the report. |
| Loss of profits | 227,115 | 160,017 | Claim adjusted to reflect historical results. See paragraphs 50-57 of the report. |
| Restart costs | 1,049 | 1,049 | Claim recommended in full. See paragraphs 63-66 of the report. |
| TOTAL | 246,444 | 171,267 | |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Al-Mutaw Kuwaiti Group Trd. Cont. Co.
UNCC claim number: 4004271
UNSEQ number: E-01163

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 3,586 | 3,581 | Original tangible property claim reclassified as loss of tangible property and stock. Tangible property claim adjusted for depreciation. See paragraphs 39-40 of the report. |
| Loss of stock | 17,055 | 9,723 | Claim for vehicles stock adjusted for evidentiary shortcomings. Claim for loss of contracting materials adjusted for obsolescence and evidentiary shortcomings. See paragraphs 39 and 41-43 of the report. |
| Loss of profits | 29,000 | 6,172 | Claim adjusted to reflect historical results, for windfall profits and for evidentiary shortcomings. See paragraphs 50-57 of the report. |
| TOTAL | 49,641 | 19,476 | |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Abdul Rahim Al-Awadi & Partners Trading Company |
| UNCC claim number: | 4004272 |
| UNSEQ number: | E-01164 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 2,633 | 2,633 | Original tangible property claim reclassified as loss of tangible property and stock. Tangible property claim recommended in full. See paragraphs 39-40 of the report. |
| Loss of stock | 75,235 | 48,150 | Claim adjusted for obsolescence and evidentiary shortcomings. See paragraphs 39 and 41-43 of the report. |
| Loss of profits | 1,185 | 462 | Claim adjusted to reflect historical results. See paragraphs 50-57 of the report. |
| TOTAL | 79,053 | 51,245 | |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Homa General Trading and Contracting Company W.L.L. |
| UNCC claim number: | 4004273 |
| UNSEQ number: | E-01165 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 84,653 | 34,339 | Original tangible property claim reclassified as loss of tangible property and vehicles. Tangible property claim adjusted for depreciation and for evidentiary shortcomings. See paragraphs 39-40 of the report. |
| Loss of vehicles | 150,857 | 46,470 | Claim adjusted for evidentiary shortcomings. See paragraphs 39 and 45 of the report. |
| TOTAL | 235,510 | 80,809 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 1,500 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Hamad Saleh Al Hamad & Partners Company for General Trading & Contracting
UNCC claim number: 4004274
UNSEQ number: E-01166

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of profits | 508,725 | 305,485 | Claim adjusted to reflect historical results. See paragraphs 50-57 of the report. |
| TOTAL | 508,725 | 305,485 | |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Al-Watan Sweet Company W.L.L. |
| UNCC claim number: | 4004276 |
| UNSEQ number: | E-01168 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 29,874 | 8,052 | Original tangible property claim reclassified as loss of stock. Claim adjusted for stock build-up, obsolescence and evidentiary shortcomings. See paragraphs 39 and 41-43 of the report. |
| Loss of profits | 134,436 | 134,436 | Claim recommended in full. See paragraphs 50-57 of the report. |
| TOTAL | 164,310 | 142,488 | |

# Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Khalifa Daij El-Dabbous, Bros. & Partners
UNCC claim number: 4004277
UNSEQ number: E-01169

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of contract | 63,862 | 51,090 | Claim adjusted for evidentiary shortcomings. See paragraphs 28-33 of the report. |
| Loss of tangible property | 312,878 | 265,294 | Original tangible property claim reclassified as loss of contracts, tangible property, stock and vehicles. Tangible property claim adjusted for evidentiary shortcomings. See paragraphs 39-40 of the report. |
| Loss of stock | 92,223 | 69,033 | Claim adjusted for obsolescence and evidentiary shortcomings. See paragraphs 39 and 41-43 of the report. |
| Loss of vehicles | 391,350 | 310,829 | Claim adjusted to reflect M.V.V. Table values. See paragraphs 39 and 45 of the report. |
| Loss of profits | 113,784 | 73,393 | Claim adjusted to reflect historical results and for windfall profits. See paragraphs 50-57 of the report. |
| TOTAL | 974,097 | 769,639 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 2,000 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Behbehani Woolens Co.
UNCC claim number: 4004278
UNSEQ number: E-01170

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 17,037 | 11,125 | Original tangible property claim reclassified as loss of tangible property, stock and cash. Tangible property claim adjusted for depreciation and failure to repair/replace. See paragraphs 39-40 of the report. |
| Loss of stock | 309,505 | 247,604 | Claim adjusted for obsolescence. See paragraphs 39 and 41-43 of the report. |
| Loss of cash | 5,725 | 5,725 | Claim recommended in full. See paragraphs 39 and 44 of the report. |
| Loss of profits | 24,090 | 16,632 | Claim adjusted to reflect historical results and for evidentiary shortcomings. See paragraphs 50-57 of the report. |
| TOTAL | 356,357 | 281,086 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 1,500 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Al-Khateeb Trading Group |
| UNCC claim number: | 4004279 |
| UNSEQ number: | E-01171 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 41,145 | 24,069 | Original tangible property claim reclassified as loss of stock and vehicles. See paragraph 42 of the report. |
| Loss of vehicles | 1,800 | 1,800 | Claim recommended in full. See paragraphs 39 and 45 of the report. |
| Loss of profits | 89,156 | 40,120 | Claim adjusted for windfall profits and evidentiary shortcomings. See paragraphs 50-57 of the report. |
| TOTAL | 132,101 | 65,989 | |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Al-Amiry Trading & Contracting Company W.L.L.
UNCC claim number: 4004280
UNSEQ number: E-01172

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of contract | 249,223 | 0 | Insufficient evidence to substantiate claim. See paragraphs 28-33 of the report. |
| Loss of tangible property | 789,091 | 438,527 | Original tangible property claim reclassified as loss of contracts, tangible property and vehicles. Tangible property claim adjusted for depreciation and failure to repair/replace. See paragraphs 39-40 of the report. |
| Loss of vehicles | 191,795 | 168,384 | Claim adjusted to reflect M.V.V. Table values. See paragraphs 39 and 45 of the report. |
| Loss of profits | 217,371 | 127,611 | Claim adjusted to reflect historical results and for evidentiary shortcomings. See paragraphs 50-57 of the report. |
| TOTAL | 1,447,480 | 734,522 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 4,000 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Gaza Trading Bureau W.L.L. |
| UNCC claim number: | 4004282 |
| UNSEQ number: | E-01174 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 39,857 | 31,886 | Original tangible property claim reclassified as loss of stock. Stock claim adjusted for obsolescence. See paragraphs 39 and 41-43 of the report. |
| Loss of profits | 53,665 | 53,665 | Claim recommended in full. See paragraphs 50-57 of the report. |
| TOTAL | 93,522 | 85,551 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 500 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

# Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Farajalla Press Agency Co. |
| UNCC claim number: | 4004283 |
| UNSEQ number: | E-01175 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 14,442 | 14,442 | Original tangible property claim reclassified as loss of tangible property, stock and vehicles. Tangible property claim recommended in full. See paragraphs 39-40 of the report. |
| Loss of stock | 278,214 | 164,360 | Claim adjusted for evidentiary shortcomings and obsolescence. See paragraphs 39 and 41-43 of the report. |
| Loss of vehicles | 1,500 | 1,500 | Claim recommended in full. See paragraphs 39 and 45 of the report. |
| Loss of profits | 56,040 | 56,040 | Claim recommended in full. See paragraphs 50-57 of the report. |
| TOTAL | 350,196 | 236,342 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 1,000 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Yali & Allayan Trading Company W.L.L. Kuwait |
| UNCC claim number: | 4004284 |
| UNSEQ number: | E-01176 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 672,143 | 189,555 | Original tangible property claim reclassified as loss of stock. Stock claim adjusted for stock build-up and obsolescence. Insufficient evidence to substantiate claim for loss of goods in transit. See paragraphs 39 and 41-43 of the report. |
| Loss of vehicles | 12,200 | 11,266 | Claim adjusted to reflect M.V.V. Table values. See paragraphs 39 and 45 of the report. |
| Loss of profits | 254,230 | 190,672 | Claim adjusted for seasonality. See paragraphs 50-57 of the report. |
| TOTAL | 938,573 | 391,493 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 1,325 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Bin Hamad Trading & Industrial
UNCC claim number: 4004286
UNSEQ number: E-01178

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of real property | 20,182 | 15,136 | Claim adjusted for maintenance and evidentiary shortcomings. See paragraphs 34-37 of the report. |
| Loss of stock | 22,300 | 21,551 | Original tangible property claim reclassified as loss of stock. Stock claim adjusted for obsolescence. See paragraphs 39 and 41-43 of the report. |
| Loss of profits | 25,884 | 18,247 | Claim adjusted to reflect historical results and for windfall profits. See paragraphs 50-57 of the report. |
| TOTAL | 68,366 | 54,934 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 2,000 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Al Jarallah Trading & Contracting Company
UNCC claim number: 4004287
UNSEQ number: E-01179

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of profits | 326,023 | 0 | Insufficient evidence to substantiate claim. See paragraphs 50-57 of the report. |
| TOTAL | 326,023 | 0 | |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

**Claimant's name**: Al-Ostoura International Company for General Trading and Contracting
**UNCC claim number**: 4004288
**UNSEQ number**: E-01180

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 49,808 | 24,630 | Original tangible property claim reclassified as loss of stock. Stock claim adjusted for stock build-up, obsolescence and evidentiary shortcomings. See paragraphs 39 and 41-43 of the report. |
| Loss of profits | 82,901 | 38,940 | Original payment or relief to others claim reclassified to loss of profits. Profits claim adjusted to reflect historical results. See paragraphs 50-57 of the report. |
| Restart costs | 15,003 | 7,246 | Claim adjusted for evidentiary shortcomings. See paragraphs 63-66 of the report. |
| TOTAL | 147,712 | 70,816 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 2,548 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |
| Interest | 13,405 | n.a. | Governing Council's determination pending. See paragraph 80 of the report. |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Snoo Noo Clothes and Accessories Company |
| UNCC claim number: | 4004289 |
| UNSEQ number: | E-01181 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 30,670 | 10,771 | Original tangible property claim reclassified as loss of stock. Stock claim adjusted for stock build-up, obsolescence and evidentiary shortcomings. See paragraphs 39 and 41-43 of the report. |
| Loss of profits | 8,388 | 3,775 | Claim adjusted for evidentiary shortcomings and windfall profits. See paragraphs 50-57 of the report. |
| TOTAL | 39,058 | 14,546 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 750 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |
| Interest | 4,150 | n.a. | Governing Council's determination pending. See paragraph 80 of the report. |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Al Anhar Foodstuff Company
UNCC claim number: 4004290
UNSEQ number: E-01182

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of real property | 6,250 | 4,685 | Claim adjusted for maintenance. See paragraphs 34-37 of the report. |
| Loss of stock | 503,311 | 205,856 | Original tangible property claim reclassified as loss of stock. Stock claim adjusted for stock build-up and obsolescence. See paragraphs 39 and 41-43 of the report. |
| Loss of profits | 162,294 | 38,014 | Claim adjusted to reflect historical results and for evidentiary shortcomings. See paragraphs 50-57 of the report. |
| TOTAL | 671,855 | 248,555 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 3,000 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |
| Interest | 71,703 | n.a. | Governing Council's determination pending. See paragraph 80 of the report. |

# Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Amador Company W.L.L., A. Kashlan & S.S.A. Al-Rasheedy |
| UNCC claim number: | 4004291 |
| UNSEQ number: | E-01183 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 13,066 | 13,066 | Original tangible property reclassified as loss of tangible property and stock. Tangible property claim recommended in full. See paragraphs 39-40 of the report. |
| Loss of stock | 120,000 | 61,912 | Claim adjusted for stock build-up. See paragraphs 39 and 41-43 of the report. |
| Loss of profits | 77,316 | 57,987 | Claim adjusted for windfall profits. See paragraphs 50-57 of the report. |
| TOTAL | 210,382 | 132,965 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 1,200 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Arab Commercial Enterprises W.L.L. |
| UNCC claim number: | 4004292 |
| UNSEQ number: | E-01184 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of profits | 52,259 | 19,365 | Original payment or relief to others claim reclassified as loss of profits. Profits claim adjusted to reflect historical results and for evidentiary shortcomings. See paragraphs 50-57 of the report. |
| TOTAL | 52,259 | 19,365 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 5,000 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Gulf Building Material Company
UNCC claim number: 4004293
UNSEQ number: E-01185

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of real property | 36,765 | 24,328 | Claim adjusted for maintenance and evidentiary shortcomings. See paragraphs 34-37 of the report. |
| Loss of tangible property | 219,779 | 129,148 | Original tangible property claim reclassified as loss of tangible property, stock and vehicles. Tangible property claim adjusted for depreciation and for evidentiary shortcomings. See paragraphs 39-40 of the report. |
| Loss of stock | 94,051 | 28,968 | Claim adjusted for evidentiary shortcomings and obsolescence. See paragraphs 39 and 41-43 of the report. |
| Loss of vehicles | 27,482 | 23,360 | Claim adjusted for evidentiary shortcomings. See paragraphs 39 and 45 of the report. |
| TOTAL | 378,077 | 205,804 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 3,000 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Al Madadd Trading & Contracting Company (Former Al Fow Tradg. & Cont. Company) |
| UNCC claim number: | 4004294 |
| UNSEQ number: | E-01186 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 28,861 | 0 | Original loss of tangible property claim reclassified as loss of stock. Insufficient evidence to substantiate stock claim. See paragraphs 39 and 41-43 of the report. |
| Loss of profits | 67,959 | 67,959 | Claim recommended in full. See paragraphs 50-57 of the report. |
| TOTAL | 96,820 | 67,959 | |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Al-Nusif Cleaning Co.
UNCC claim number: 4004295
UNSEQ number: E-01187

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 132,781 | 74,468 | Original tangible property claim reclassified as loss of tangible property and stock. Tangible property claim adjusted for depreciation, evidentiary shortcomings, failure to repair/replace and maintenance. See paragraphs 39-40 of the report. |
| Loss of stock | 41,141 | 26,200 | Claim adjusted for stock build-up, obsolescence and evidentiary shortcomings. See paragraphs 39 and 41-43 of the report. |
| TOTAL | 173,922 | 100,668 | |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Gulf Group for Mechanical & Electrical Works

UNCC claim number: 4004296

UNSEQ number: E-01188

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of vehicles | 4,858 | 4,858 | Original real property claim reclassified as loss of vehicles. Vehicles claim recommended in full. See paragraphs 39 and 45 of the report. |
| Loss of profits | 29,951 | 14,479 | Claim adjusted to reflect historical results and for windfall profits. See paragraphs 50-57 of the report. |
| Bad debts | 18,841 | 0 | Insufficient evidence to substantiate claim. See paragraphs 58-62 of the report. |
| TOTAL | 53,650 | 19,337 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 1,500 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Marzouk Abdulwahab Al-Dawood & Bros. for General Trading & Cont. Co.
UNCC claim number: 4004297
UNSEQ number: E-01189

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of real property | 5,858 | 3,499 | Original restart costs claim reclassified as loss of real property. Real property claim adjusted for evidentiary shortcomings and maintenance. See paragraphs 34-37 of the report. |
| Loss of tangible property | 6,677 | 6,677 | Original tangible property claim reclassified as loss of tangible property, stock and vehicles. Tangible property claim recommended in full. See paragraphs 39-40 of the report. |
| Loss of stock | 134,834 | 112,855 | Claim adjusted for stock build-up and obsolescence. See paragraphs 39 and 41-43 of the report. |
| Loss of vehicles | 1,000 | 1,000 | Claim recommended in full. See paragraphs 39 and 45 of the report. |
| Loss of profits | 21,000 | 0 | Claim adjusted to reflect historical results. See paragraphs 50-57 of the report. |
| TOTAL | 169,369 | 124,031 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 5,000 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |
| Interest | 15,874 | n.a. | Governing Council's determination pending. See paragraph 80 of the report. |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Aptus Kuwait Company |
| UNCC claim number: | 4004298 |
| UNSEQ number: | E-01190 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of real property | 50,000 | 40,000 | Claim adjusted for maintenance. See paragraphs 34-37 of the report. |
| Loss of tangible property | 183,610 | 146,888 | Original tangible property claim reclassified as loss of tangible property, stock and vehicles. Tangible property claim adjusted for failure to repair/replace. See paragraphs 39-40 of the report. |
| Loss of stock | 36,831 | 10,399 | Claim adjusted for stock build-up, obsolescence and evidentiary shortcomings. See paragraphs 39 and 41-43 of the report. |
| Loss of vehicles | 21,700 | 12,133 | Claim adjusted to reflect M.V.V. Table values. See paragraphs 39 and 45 of the report. |
| TOTAL | 292,141 | 209,420 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 750 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |
| Interest | 29,214 | n.a. | Governing Council's determination pending. See paragraph 80 of the report. |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Al Noor Optical Co. W.L.L. |
| UNCC claim number: | 4004299 |
| UNSEQ number: | E-01191 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of real property | 6,800 | 3,400 | Original restart costs claim reclassified as loss of real property. Real property claim adjusted for depreciation. See paragraphs 34-37 of the report. |
| Loss of tangible property | 19,419 | 14,095 | Original tangible property claim reclassified as loss of tangible property and stock. Tangible property claim adjusted for depreciation and failure to repair/replace. See paragraphs 39-40 of the report. |
| Loss of stock | 57,596 | 18,094 | Claim adjusted for stock build-up and obsolescence. See paragraphs 39 and 41-43 of the report. |
| Loss of profits | 26,575 | 3,420 | Claim adjusted to reflect historical results for a 12 month indemnity period and for windfall profits. See paragraphs 50-57 of the report. |
| TOTAL | 110,390 | 39,009 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 2,000 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

### Annex II

### Recommended awards for thirteenth instalment of "E4" claims

### Reported by claimant name and category of loss

Claimant's name: Al Diwan United for Electrical & Plumbing Appliances
UNCC claim number: 4004300
UNSEQ number: E-01192

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 1,557,723 | 627,522 | Original tangible property claim reclassified as loss of stock and vehicles. Stock claim adjusted for stock build-up and obsolescence. See paragraphs 39 and 41-43 of the report. |
| Loss of vehicles | 1,240 | 1,108 | Claim adjusted to reflect M.V.V. Table values. See paragraphs 39 and 45 of the report. |
| Loss of profits | 132,810 | 59,175 | Claim adjusted to reflect historical results and for evidentiary shortcomings. See paragraphs 50-57 of the report. |
| TOTAL | 1,691,773 | 687,805 | |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Arab Gulf Company for Modern Technology
UNCC claim number: 4004301
UNSEQ number: E-01193

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 16,253 | 3,976 | Original tangible property claim reclassified as loss of tangible property, stock and other losses. Tangible property claim adjusted for depreciation, evidentiary shortcomings and failure to repair/replace. See paragraphs 39-40 of the report. |
| Loss of stock | 65,799 | 34,313 | Claim adjusted for stock build-up and obsolescence. See paragraphs 39 and 41-43 of the report. |
| Loss of profits | 25,753 | 6,172 | Claim adjusted to reflect historical results for a 12 month indemnity period, for evidentiary shortcomings and windfall profits. See paragraphs 50-57 of the report. |
| Other loss not categorised | 56,430 | 0 | Insufficient evidence to substantiate claim. See paragraphs 67-79 of the report. |
| TOTAL | 164,235 | 44,461 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 2,500 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

Annex II

Recommended awards for thirteenth instalment of "E4" claims

Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Al-Taneeb Trading Company |
| UNCC claim number: | 4004302 |
| UNSEQ number: | E-01194 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 566,551 | 303,054 | Original tangible property claim reclassified as loss of stock and vehicles. Stock claim adjusted for obsolescence and for evidentiary shortcomings. Insufficient evidence to substantiate claim for goods in transit. See paragraphs 39 and 41-43 of the report. |
| Loss of vehicles | 1,750 | 300 | Claim adjusted to reflect M.V.V. Table values. See paragraphs 39 and 45 of the report. |
| Loss of profits | 88,209 | 88,209 | Claim recommended in full. See paragraphs 50-57 of the report. |
| TOTAL | 656,510 | 391,563 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 2,000 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Deco Kuwait Company W.L.L.
UNCC claim number: 4004304
UNSEQ number: E-01196

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 259,952 | 123,412 | Original tangible property claim reclassified as loss of stock. Stock claim adjusted for stock build-up and obsolescence. See paragraphs 39 and 41-43 of the report. |
| Loss of profits | 160,360 | 17,703 | Claim adjusted to reflect historical results for a nine month indemnity period, for windfall profits and evidentiary shortcomings. See paragraphs 50-57 of the report. |
| TOTAL | 420,312 | 141,115 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 3,250 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Al-Zomurrdah Jewellery Company W.L.L.
UNCC claim number: 4004305
UNSEQ number: E-01197

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 70,672 | 17,578 | Original tangible property claim reclassified as loss of tangible property and stock. Tangible property claim adjusted for depreciation, failure to repair/replace and evidentiary shortcomings. See paragraphs 39-40 of the report. |
| Loss of stock | 194,016 | 126,110 | Claim adjusted for evidentiary shortcomings. See paragraphs 39 and 41-43 of the report. |
| TOTAL | 264,688 | 143,688 | |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Al-Aqsa Sweet Company W.L.L. |
| UNCC claim number: | 4004306 |
| UNSEQ number: | E-01198 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 12,404 | 9,049 | Original tangible property claim reclassified as loss of tangible property and stock. Tangible property claim adjusted for depreciation and evidentiary shortcomings. See paragraphs 39-40 of the report. |
| Loss of stock | 36,127 | 7,246 | Claim adjusted for stock build-up, obsolescence and evidentiary shortcomings. See paragraphs 39 and 41-43 of the report. |
| Loss of profits | 20,624 | 16,697 | Claim adjusted for evidentiary shortcomings. See paragraphs 50-57 of the report. |
| TOTAL | 69,155 | 32,992 | |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Al-Haramain General Trading Co. Limited Partnership
UNCC claim number: 4004307
UNSEQ number: E-01199

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 8,881 | 6,717 | Original tangible property claim reclassified as loss of tangible property and vehicles. Tangible property claim adjusted for depreciation and failure to repair/replace. See paragraphs 39-40 of the report. |
| Loss of vehicles | 18,825 | 10,471 | Claim adjusted to reflect M.V.V. Table results. See paragraphs 39 and 45 of the report. |
| Loss of profits | 48,428 | 43,493 | Claim adjusted to reflect historical results. See paragraphs 50-57 of the report. |
| TOTAL | 76,134 | 60,681 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 1,250 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Bodour Al Khaleej Company Limited Partnership |
| UNCC claim number: | 4004308 |
| UNSEQ number: | E-01200 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 2,624 | 1,443 | Original tangible property claim reclassified as loss of tangible property and stock. Tangible property claim adjusted for evidentiary shortcomings and failure to repair/replace. See paragraphs 39-40 of the report. |
| Loss of stock | 65,385 | 52,308 | Claim adjusted for obsolescence. See paragraphs 39 and 41-43 of the report. |
| Loss of profits | 34,918 | 23,399 | Claim adjusted to reflect historical results and for evidentiary shortcomings. See paragraphs 50-57 of the report. |
| TOTAL | 102,927 | 77,150 | |

## Annex II

### Recommended awards for thirteenth instalment of "E4" claims

### Reported by claimant name and category of loss

Claimant's name: Al Sedan Trading & Cont. Co. W.L.L.
UNCC claim number: 4004309
UNSEQ number: E-01201

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 2,383 | 1,906 | Original tangible property claim reclassified as loss of tangible property and stock. Tangible property claim adjusted for evidentiary shortcomings. See paragraphs 39-40 of the report. |
| Loss of stock | 119,658 | 69,159 | Claim adjusted for stock build-up and obsolescence. See paragraphs 39 and 41-43 of the report. |
| Loss of profits | 20,149 | 6,946 | Claim adjusted to reflect historical results and for windfall profits. See paragraphs 50-57 of the report. |
| TOTAL | 142,190 | 78,011 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 2,500 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Copri Construction Company W.L.L. |
| UNCC claim number: | 4004310 |
| UNSEQ number: | E-01202 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of real property | 238,000 | 190,400 | Claim adjusted for maintenance. See paragraphs 34-37 of the report. |
| Loss of tangible property | 233,737 | 206,613 | Original tangible property claim reclassified as loss of tangible property, stock and vehicles. Tangible property claim adjusted for evidentiary shortcomings and failure to repair/replace. See paragraphs 39-40 of the report. |
| Loss of stock | 194,305 | 0 | Insufficient evidence to substantiate claim. See paragraphs 39 and 41-43 of the report. |
| Loss of vehicles | 88,600 | 62,927 | Claim adjusted for evidentiary shortcomings and to reflect M.V.V. Table values. See paragraphs 39 and 45 of the report. |
| Loss of profits | 54,629 | 34,935 | Original payment or relief to others claim reclassified as loss of profits. Original profits claim reclassified as loss of profits and restart costs. Profits claim adjusted to reflect historical results for a 12 month indemnity period and for windfall profits. See paragraphs 50-57 of the report. |
| Restart costs | 20,452 | 0 | See paragraph 65 of the report. |
| TOTAL | 829,723 | 494,875 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 5,000 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |
| Interest | 62,004 | n.a. | Governing Council's determination pending. See paragraph 80 of the report. |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: The National Paper and By-Products Company W.L.L.
UNCC claim number: 4004311
UNSEQ number: E-01203

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 60,816 | 40,704 | Original tangible property claim reclassified as loss of tangible property and stock. Tangible property claim adjusted for evidentiary shortcomings and failure to repair/replace. See paragraphs 39-40 of the report. |
| Loss of stock | 630,085 | 227,469 | Claim adjusted for stock build-up, obsolescence and evidentiary shortcomings. See paragraphs 39 and 41-43 of the report. |
| Loss of profits | 68,696 | 68,696 | Claim recommended in full. See paragraphs 50-57 of the report. |
| TOTAL | 759,597 | 336,869 | |

## Annex II

### Recommended awards for thirteenth instalment of "E4" claims

### Reported by claimant name and category of loss

Claimant's name: Al-Zaher Trading Company with Limited Liability
UNCC claim number: 4004312
UNSEQ number: E-01204

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 330,729 | 207,015 | Original tangible property claim reclassified as loss of stock. Stock claim adjusted for stock build-up, obsolescence and evidentiary shortcomings. Goods in transit claim adjusted for evidentiary shortcomings and obsolescence. See paragraphs 39 and 41-43 of the report. |
| Loss of profits | 12,591 | 5,906 | Claim adjusted to reflect historical results and for seasonality. See paragraphs 50-57 of the report. |
| TOTAL | 343,320 | 212,921 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 1,750 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Canar Trading & Contracting Co.
UNCC claim number: 4004313
UNSEQ number: E-01205

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---:|---:|---|
| Loss of tangible property | 729 | 729 | Claim recommended in full. See paragraphs 39-40 of the report. |
| Loss of profits | 109,303 | 37,921 | Claim adjusted to reflect historical results and for windfall profits. See paragraphs 50-57 of the report. |
| TOTAL | 110,032 | 38,650 | |

| | | | |
|---|---:|---:|---|
| Claim preparation costs | 600 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Al Edwany Company W.L.L. |
| UNCC claim number: | 4004314 |
| UNSEQ number: | E-01206 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---:|---:|---|
| Loss of real property | 10,569 | 8,005 | Original real property claim reclassified as loss of real and tangible property. Real property claim adjusted for depreciation and maintenance. See paragraphs 34-37 of the report. |
| Loss of tangible property | 28,427 | 18,161 | Original tangible property claim reclassified as loss of tangible property and vehicles. Tangible property claim adjusted for depreciation, maintenance and failure to repair/replace. See paragraphs 39-40 of the report. |
| Loss of vehicles | 6,970 | 3,291 | Claim adjusted to reflect M.V.V. Table values and for evidentiary shortcomings. See paragraphs 39 and 45 of the report. |
| Loss of profits | 14,832 | 0 | Claim adjusted to reflect historical results. See paragraphs 50-57 of the report. |
| TOTAL | 60,798 | 29,457 | |

# Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Mass Consultant & Services Co. |
| UNCC claim number: | 4004316 |
| UNSEQ number: | E-01208 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 10,153 | 10,153 | Original tangible property claim reclassified as loss of tangible property and vehicles. Tangible property claim recommended in full. See paragraphs 39-40 of the report. |
| Loss of vehicles | 1,616 | 1,545 | Claim adjusted for evidentiary shortcomings. See paragraphs 39 and 45 of the report. |
| Loss of profits | 116,617 | 26,700 | Original income-producing property claim reclassified as loss of profits. Claim adjusted to reflect historical results for a ten month indemnity period and for windfall profits. See paragraphs 50-57 of the report. |
| TOTAL | 128,386 | 38,398 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 600 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Al Hossiny and Saleh Trading Co. W.L.L. |
| UNCC claim number: | 4004318 |
| UNSEQ number: | E-01210 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 307,340 | 68,146 | Original tangible property claim reclassified as loss of stock. Stock claim adjusted for stock build-up, obsolescence and evidentiary shortcomings. See paragraphs 39 and 41-43 of the report. |
| Loss of profits | 25,032 | 21,584 | Claim adjusted to reflect historical results. See paragraphs 50-57 of the report. |
| TOTAL | 332,372 | 89,730 | |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Shaheen Al Ghanim Roads & Bridges Cont. Co. W.L.L. |
| UNCC claim number: | 4004319 |
| UNSEQ number: | E-01211 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 341,750 | 201,820 | Original tangible property claim reclassified as loss of tangible property and vehicles. Tangible property claim adjusted for evidentiary shortcomings. See paragraphs 39-40 of the report. |
| Loss of vehicles | 160,350 | 123,182 | Claim adjusted to reflect M.V.V. Table values. See paragraphs 39 and 45 of the report. |
| TOTAL | 502,100 | 325,002 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 3,000 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Homoud Al Zaid Al Khalid
UNCC claim number: 4004320
UNSEQ number: E-01212

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of real property | 120,089 | 54,387 | Claim adjusted for evidentiary shortcomings, depreciation, maintenance and betterment. See paragraphs 34-37 of the report. |
| Loss of profits | 609,360 | 0 | Claim adjusted to reflect historical results. See paragraphs 50-57 of the report. |
| TOTAL | 729,449 | 54,387 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 3,000 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Deema International General Trading Company W.L.L. |
| UNCC claim number: | 4004321 |
| UNSEQ number: | E-01213 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of real property | 22,894 | 22,894 | Original tangible property claim reclassified as loss of real property, tangible property and stock. Real property claim recommended in full. See paragraphs 34-37 of the report. |
| Loss of tangible property | 7,343 | 6,035 | Claim adjusted for depreciation. See paragraphs 39-40 of the report. |
| Loss of stock | 261,715 | 48,100 | Stock claim adjusted for stock build-up and obsolescence. Insufficient evidence to substantiate claim for goods in transit. See paragraphs 39 and 41-43 of the report. |
| Loss of profits | 92,411 | 92,411 | Claim recommended in full. See paragraphs 50-57 of the report. |
| TOTAL | 384,363 | 169,440 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 2,500 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: The Arab European Financial Management Co. S.A.K.C.
UNCC claim number: 4004322
UNSEQ number: E-01214

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 71,080 | 53,917 | Claim adjusted for depreciation and failure to repair/replace. See paragraphs 39-40 of the report. |
| Bad debts | 1,187,636 | 0 | Insufficient evidence to substantiate claim. See paragraphs 58-62 of the report. |
| Other loss not categorised | 151,123 | 66,245 | See paragraphs 73-77 of the report. |
| TOTAL | 1,409,839 | 120,162 | |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Al Ear and Asaker for Electric & Electronic Instruments Co. W.L.L.
UNCC claim number: 4004323
UNSEQ number: E-01215

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 290,327 | 76,159 | Original tangible property claim reclassified as loss of stock and vehicles. Stock claim adjusted for stock build-up and obsolescence. See paragraphs 39 and 41-43 of the report. |
| Loss of vehicles | 2,894 | 2,894 | Claim recommended in full. See paragraphs 39 and 45 of the report. |
| Loss of profits | 74,752 | 47,560 | Claim adjusted to reflect historical results and for windfall profits. See paragraphs 50-57 of the report. |
| Bad debts | 61,762 | 0 | Insufficient evidence to substantiate claim. See paragraphs 58-62 of the report. |
| TOTAL | 429,735 | 126,613 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 2,100 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Kuwait International Chemical Co. W.L.L. |
| UNCC claim number: | 4004324 |
| UNSEQ number: | E-01216 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 2,559 | 2,559 | Original tangible property claim reclassified as loss of tangible property, stock and vehicles. Tangible property claim recommended in full. See paragraphs 39-40 of the report. |
| Loss of stock | 27,251 | 24,472 | Stock claim adjusted for obsolescence. Goods in transit claim adjusted for evidentiary shortcomings and obsolescence. See paragraphs 39 and 41-43 of the report. |
| Loss of vehicles | 10,000 | 5,211 | Claim adjusted to reflect M.V.V. Table values. See paragraphs 39 and 45 of the report. |
| Loss of profits | 44,441 | 2,656 | Original contracts claim reclassified as loss of profits. Profits claim adjusted to reflect historical results for a 12 month indemnity period and for windfall profits. See paragraphs 50-57 of the report. |
| Restart costs | 1,355 | 305 | Claim adjusted for evidentiary shortcomings. See paragraphs 63-66 of the report. |
| TOTAL | 85,606 | 35,203 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 3,200 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

**Claimant's name**: Ghaida General Trading & Contracting Company W.L.L.

**UNCC claim number**: 4004325

**UNSEQ number**: E-01217

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 442,017 | 337,302 | Original tangible property claim reclassified as loss of stock. Claim adjusted for stock build-up, obsolescence and evidentiary shortcomings. See paragraphs 39 and 41-43 of the report. |
| Loss of profits | 66,000 | 66,000 | Claim recommended in full. See paragraphs 50-57 of the report. |
| TOTAL | 508,017 | 403,302 | |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Al-Fadala Construction Co.
UNCC claim number: 4004326
UNSEQ number: E-01218

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of vehicles | 34,000 | 28,500 | Original tangible property claim reclassified as loss of vehicles. See paragraphs 39 and 45 of the report. |
| Loss of profits | 43,398 | 10,042 | Claim adjusted to reflect historical results for a 7 month indemnity period. See paragraphs 50-57 of the report. |
| TOTAL | 77,398 | 38,542 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 2,000 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Al Manea Travels Company Ltd. |
| UNCC claim number: | 4004327 |
| UNSEQ number: | E-01219 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 13,180 | 9,935 | Claim adjusted for depreciation and failure to repair/replace. See paragraphs 39-40 of the report. |
| Loss of profits | 10,496 | 7,872 | Claim adjusted for windfall profits. See paragraphs 50-57 of the report. |
| TOTAL | 23,676 | 17,807 | |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Al-Rakhis Furnishing Co. |
| UNCC claim number: | 4004329 |
| UNSEQ number: | E-01221 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of real property | 5,236 | 4,137 | Original restart costs claim reclassified as loss of real property. Real property claim adjusted for evidentiary shortcomings and maintenance. See paragraphs 34-37 of the report. |
| Loss of tangible property | 8,268 | 6,145 | Original tangible property claim reclassified as loss of tangible property and stock. Tangible property claim adjusted for depreciation and failure to repair/replace. See paragraphs 39-40 of the report. |
| Loss of stock | 59,818 | 47,854 | Claim adjusted for obsolescence. See paragraphs 39 and 41-43 of the report. |
| Loss of profits | 9,276 | 472 | Claim adjusted to reflect historical results and for windfall profits. See paragraphs 50-57 of the report. |
| TOTAL | 82,598 | 58,608 | |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Al-Ahleia Electrical Company W.L.L. |
| UNCC claim number: | 4004330 |
| UNSEQ number: | E-01222 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 856,769 | 621,674 | Original tangible property claim reclassified as loss of stock, cash and bad debts. Stock claim adjusted for stock build-up, obsolescence and evidentiary shortcomings. See paragraphs 39 and 41-43 of the report. |
| Loss of cash | 11,942 | 11,942 | Claim recommended in full. See paragraphs 39 and 45 of the report. |
| Loss of profits | 81,055 | 58,260 | Original other loss not categorised claim reclassified as loss of profits. Profits claim adjusted to reflect historical results and for windfall profits. See paragraphs 50-57 of the report. |
| Bad debts | 331,068 | 0 | Insufficient evidence to substantiate claim. See paragraphs 58-62 of the report. |
| TOTAL | 1,280,834 | 691,876 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 2,750 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | The Kuwait Germanco for Building Materials |
| UNCC claim number: | 4004331 |
| UNSEQ number: | E-01223 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 115,985 | 92,699 | Original tangible property claim reclassified as loss of tangible property and vehicles. Tangible property claim adjusted for maintenance, depreciation and failure to repair/replace. See paragraphs 39-40 of the report. |
| Loss of vehicles | 616,000 | 216,495 | Claim adjusted for evidentiary shortcomings. See paragraphs 39 and 45 of the report. |
| Loss of profits | 374,400 | 0 | Insufficient evidence to substantiate claim. See paragraph 50-57 of the report. |
| TOTAL | 1,106,385 | 309,194 | |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Hassan Al-Sarraj Sons Co. W.L.L.
UNCC claim number: 4004332
UNSEQ number: E-01224

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of real property | 39,857 | 26,561 | Original tangible property claim reclassified as loss of real property, tangible property, stock and vehicles. Real property claim adjusted for depreciation, maintenance and evidentiary shortcomings. See paragraphs 34-37 of the report. |
| Loss of tangible property | 179,094 | 68,903 | Claim adjusted for maintenance, depreciation, failure to repair/replace and evidentiary shortcomings. See paragraphs 39-40 of the report. |
| Loss of stock | 106,872 | 21,342 | Claim adjusted for obsolescence and evidentiary shortcomings. See paragraphs 39 and 41-43 of the report. |
| Loss of vehicles | 14,005 | 10,342 | Claim adjusted to reflect M.V.V. Table values and for evidentiary shortcomings. See paragraphs 39 and 45 of the report. |
| Loss of profits | 57,759 | 21,651 | Claim adjusted to reflect historical results for a 12 month indemnity period and for windfall profits. See paragraphs 50-57 of the report. |
| TOTAL | 397,587 | 148,799 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 1,000 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Al Jaona'a Video & Electronic Appliances Company
UNCC claim number: 4004333
UNSEQ number: E-01225

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 14,244 | 9,430 | Original tangible property claim reclassified as loss of tangible property and stock. Tangible property claim adjusted for depreciation and for failure to repair/replace. See paragraphs 39-40 of the report. |
| Loss of stock | 93,569 | 67,127 | Claim adjusted for stock build-up and obsolescence. See paragraphs 39 and 41-43 of the report. |
| Loss of profits | 25,118 | 8,771 | Claim adjusted to reflect historical results for a seven month indemnity period and for evidentiary shortcomings. See paragraphs 50-57 of the report. |
| TOTAL | 132,931 | 85,328 | |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Al Mizan Electronic Equipment Company |
| UNCC claim number: | 4004334 |
| UNSEQ number: | E-01226 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 11,700 | 5,050 | Original tangible property claim reclassified as loss of tangible property and stock. Tangible property claim adjusted for depreciation, evidentiary shortcomings and failure to repair/replace. See paragraphs 39-40 of the report. |
| Loss of stock | 42,000 | 15,253 | Claim adjusted for stock build-up, obsolescence and evidentiary shortcomings. See paragraphs 39 and 41-43 of the report. |
| Loss of profits | 25,356 | 1,110 | Claim adjusted to reflect historical results and for evidentiary shortcomings. See paragraphs 50-57 of the report. |
| TOTAL | 79,056 | 21,413 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 1,500 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Al-Fateheen Co. for Equipments Trading & General Contracting |
| UNCC claim number: | 4004335 |
| UNSEQ number: | E-01227 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 85 | 85 | Original tangible property claim reclassified as loss of tangible property, cash and vehicles. Tangible property claim recommended in full. See paragraphs 39-40 of the report. |
| Loss of cash | 1,303 | 0 | Insufficient evidence to substantiate claim. See paragraphs 39 and 44 of the report. |
| Loss of vehicles | 23,050 | 17,660 | Claim adjusted to reflect M.V.V. Table values. See paragraphs 39 and 45 of the report. |
| Loss of profits | 16,972 | 1,162 | Original contracts claim reclassified as loss of profits. Profits claim adjusted to reflect historical results and for evidentiary shortcomings. See paragraphs 50-57 of the report. |
| TOTAL | 41,410 | 18,907 | |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Sadiq & Ali Co. W.L.L. |
| UNCC claim number: | 4004336 |
| UNSEQ number: | E-01228 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 1,508 | 1,508 | Original tangible property claim reclassified as loss of tangible property and stock. Tangible property claim recommended in full. See paragraphs 39-40 of the report. |
| Loss of stock | 40,602 | 21,113 | Claim adjusted for obsolescence and evidentiary shortcomings. See paragraphs 39 and 41-43 of the report. |
| Loss of profits | 44,655 | 28,420 | Claim adjusted to reflect historical results and for windfall profits. See paragraphs 50-57 of the report. |
| Restart costs | 1,804 | 0 | Insufficient evidence to substantiate claim. See paragraphs 63-66 of the report. |
| TOTAL | 88,569 | 51,041 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 1,300 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Asia Countries Steel Trading and Building
UNCC claim number: 4004337
UNSEQ number: E-01229

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 160,715 | 144,643 | Original tangible property claim reclassified as loss of stock. Stock claim adjusted for obsolescence. See paragraphs 39 and 41-43 of the report. |
| Loss of profits | 44,305 | 33,229 | Claim adjusted for windfall profits. See paragraphs 50-57 of the report. |
| TOTAL | 205,020 | 177,872 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 1,500 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

## Annex II

### Recommended awards for thirteenth instalment of "E4" claims

### Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Kuwait Gypsum Manufacturing & Trading Company |
| UNCC claim number: | 4004338 |
| UNSEQ number: | E-01230 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 69,418 | 54,874 | Original tangible property claim reclassified as loss of tangible property, stock and vehicles. Tangible property claim adjusted for depreciation, maintenance and evidentiary shortcomings. See paragraphs 39-40 of the report. |
| Loss of stock | 110,295 | 68,854 | Claim adjusted for stock build-up and obsolescence. See paragraphs 39 and 41-43 of the report. |
| Loss of vehicles | 18,400 | 13,710 | Claim adjusted to reflect M.V.V. Table values. See paragraphs 39 and 45 of the report. |
| Restart costs | 1,939 | 1,939 | Claim recommended in full. See paragraphs 63-66 of the report. |
| TOTAL | 200,052 | 139,377 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 2,350 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Al Aqoul Sanitary & Electrical Contracting Company W.L.L.
UNCC claim number: 4004340
UNSEQ number: E-01232

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 31,116 | 31,116 | Original tangible property claim reclassified as loss of tangible property, stock and vehicles. Tangible property claim recommended in full. See paragraphs 39-40 of the report. |
| Loss of stock | 155,250 | 45,364 | Claim adjusted for stock build-up and obsolescence. See paragraphs 39 and 41-43 of the report. |
| Loss of vehicles | 9,299 | 7,904 | Claim adjusted for evidentiary shortcomings. See paragraphs 39 and 45 of the report. |
| Loss of profits | 38,117 | 19,671 | Claim adjusted to reflect historical results and for windfall profits. See paragraphs 50-57 of the report. |
| TOTAL | 233,782 | 104,055 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 1,500 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Al-Atraf and Al-Salmi Company for Repairing Cars & Spare Parts
UNCC claim number: 4004341
UNSEQ number: E-01233

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 148,972 | 16,379 | Original tangible property claim reclassified as loss of stock. Stock claim adjusted for stock build-up, obsolescence and evidentiary shortcomings. See paragraphs 39 and 41-43 of the report. |
| Loss of profits | 52,400 | 22,298 | Claim adjusted to reflect historical results for an eight month indemnity period and for evidentiary shortcomings. See paragraphs 50-57 of the report. |
| TOTAL | 201,372 | 38,677 | |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Palms Agro-Production Company |
| UNCC claim number: | 4004343 |
| UNSEQ number: | E-01235 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of real property | 370,074 | 182,693 | Claim adjusted for depreciation, betterment and failure to repair/replace. See paragraphs 34-37 of the report. |
| Loss of tangible property | 456,656 | 189,653 | Original tangible property claim reclassified as loss of tangible property, stock and vehicles. Tangible property claim adjusted for depreciation, maintenance and failure to repair/replace. See paragraphs 39-40 of the report. |
| Loss of stock | 1,380,975 | 790,240 | Stock claim adjusted for stock build-up and obsolescence. Insufficient evidence to substantiate goods in transit claim. See paragraphs 39 and 41-43 of the report. |
| Loss of vehicles | 72,473 | 55,256 | Claim adjusted to reflect M.V.V. Table values and for evidentiary shortcomings. See paragraphs 39 and 45 of the report. |
| TOTAL | 2,280,178 | 1,217,842 | |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Abdul Rahman Mohamad Al-Bahar & Partners Co. W.L.L.
UNCC claim number: 4004344
UNSEQ number: E-01236

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of real property | 14,517 | 9,893 | Claim adjusted for evidentiary shortcomings, depreciation and maintenance. See paragraphs 34-37 of the report. |
| Loss of tangible property | 2,023 | 1,686 | Claim adjusted for depreciation. See paragraphs 39-40 of the report. |
| Loss of profits | 779,639 | 775,424 | Claim adjusted to reflect historical results. See paragraphs 50-57 of the report. |
| Restart costs | 1,500 | 1,500 | Claim recommended in full. See paragraphs 63-66 of the report. |
| TOTAL | 797,679 | 788,503 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 2,910 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Mohammed Al-Subaiy Jewelleries Co. Mohammed Mayah Al-Subaiy & Sons |
| UNCC claim number: | 4004345 |
| UNSEQ number: | E-01237 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 9,783 | 9,783 | Original tangible property claim reclassified as loss of tangible property and stock. Tangible property claim recommended in full. See paragraphs 39-40 of the report. |
| Loss of stock | 381,250 | 358,142 | Claim adjusted for stock build-up. See paragraphs 39 and 41-43 of the report. |
| Loss of profits | 177,140 | 114,849 | Claim adjusted to reflect historical results for a 12 month indemnity period. See paragraphs 50-57 of the report. |
| TOTAL | 568,173 | 482,774 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 1,000 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: Ahed Mohammed Saleh Al-Khateeb & Partner for Perfumes & Accessories Co.

UNCC claim number: 4004346

UNSEQ number: E-01238

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of real property | 83,880 | 25,914 | Original restart costs claim reclassified as loss of real property. Real property claim adjusted for depreciation, maintenance, failure to repair/replace and evidentiary shortcomings. See paragraphs 34-37 of the report. |
| Loss of tangible property | 16,800 | 16,045 | Original tangible property claim reclassified as loss of tangible property and stock. Tangible property claim adjusted for failure to repair/replace. See paragraphs 39-40 of the report. |
| Loss of stock | 931,291 | 422,534 | Claim adjusted for stock build-up and obsolescence. See paragraphs 39 and 41-43 of the report. |
| Loss of profits | 360,013 | 101,546 | Original other loss not categorised claim reclassified as loss of profits. Profits claim adjusted to reflect historical results for a 12 month indemnity period. See paragraphs 50-57 of the report. |
| TOTAL | 1,391,984 | 566,039 | |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant's name: | Shamlan & Ibrahim General Contracting |
| UNCC claim number: | 4004347 |
| UNSEQ number: | E-01239 |

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of stock | 37,497 | 6,950 | Original tangible property claim reclassified as loss of stock. Stock claim adjusted for stock build-up, obsolescence and evidentiary shortcomings. See paragraphs 39 and 41-43 of the report. |
| TOTAL | 37,497 | 6,950 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 1,000 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |
| Interest | 6,796 | n.a. | Governing Council's determination pending. See paragraph 80 of the report. |

## Annex II

## Recommended awards for thirteenth instalment of "E4" claims

## Reported by claimant name and category of loss

Claimant's name: M/s. Dana & Berkeley Trading Co. W.L.L.
UNCC claim number: 4004348
UNSEQ number: E-01240

| Category of loss | Amount asserted (KWD) | Amount recommended (KWD) | Comments |
|---|---|---|---|
| Loss of tangible property | 284,657 | 215,232 | Original tangible property claim reclassified as loss of tangible property, stock and vehicles. Tangible property claim adjusted for depreciation and evidentiary shortcomings. See paragraphs 39-40 of the report. |
| Loss of stock | 17,512 | 7,713 | Claim adjusted for stock build-up, obsolescence and evidentiary shortcomings. See paragraphs 39 and 41-43 of the report. |
| Loss of vehicles | 212,930 | 116,991 | Claim adjusted to reflect M.V.V. Table values and for evidentiary shortcomings. See paragraphs 39 and 45 of the report. |
| Loss of profits | 311,726 | 0 | Original contracts claim reclassified as loss of profits. Profits claim adjusted to reflect historical results. See paragraphs 50-57 of the report. |
| Bad debts | 197,788 | 0 | Insufficient evidence to substantiate claim. See paragraphs 58-62 of the report. |
| TOTAL | 1,024,613 | 339,936 | |

| | | | |
|---|---|---|---|
| Claim preparation costs | 3,000 | n.a. | Governing Council's determination pending. See paragraph 81 of the report. |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

Claimant: Export Finance & Insurance Corporation

UNCC claim number: 4000039 - Sub Claim No.11 (Unilac Australia Pty Ltd)

Submitting entity: Australia

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Contractual losses - export credit | 110,470 | 38,199 | Claim adjusted for insufficient evidence of payment |
| TOTAL |  | 110,470 | 38,199 |  |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant: | Export Finance & Insurance Corporation |
| UNCC claim number: | 4000039 - Sub Claim No.12 (Goodman Fielder Foods Ltd) |
| Submitting entity: | Australia |

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Contractual losses - export credit | 14,765 | Nil | Claim denied as part or all of the loss is not direct |
| TOTAL | | 14,765 | Nil | |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

Claimant: Export Finance & Insurance Corporation

UNCC claim number: 4000039 - Sub Claim No.13 (Vantree Pty Ltd)

Submitting entity: Australia

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Contractual losses - export credit | 1,198 | Nil | Claim denied as part or all of the loss is not direct |
| TOTAL | | 1,198 | Nil | |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

Claimant: Bahrain Insurance Company

UNCC claim number: 4000079

Submitting entity: Bahrain

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Other tangible property - loss of vessel | 319,149 | 319,149 | |
| TOTAL | | 319,149 | 319,149 | |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

Claimant: Aviabel Compagnie Belge d'Assurances Aviation SA

UNCC claim number: 4000194

Submitting entity: Belgium

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Other tangible property - loss of aircraft | 210,000 | 195,510 | Claim adjusted for insufficient evidence of payment; part or all of the underlying loss is unsubstantiated |
| TOTAL |  | 210,000 | 195,510 |  |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

Claimant: Krigsforsikringen for Danske Skibe

UNCC claim number: 4000065

Submitting entity: Denmark

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Other tangible property - loss of vessel | 180,000,000 | Nil | Claim denied as part or all of the loss is not direct |
| TOTAL | | 180,000,000 | Nil | |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

Claimant: Assurance Generales de France IART-AGF

UNCC claim number: 4001877

Submitting entity: France

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Legal liabilities - British Airways passenger losses: | | | |
| | Payments to passengers | 120,924 | 83,068 | Claim adjusted as part or all of the underlying loss is unsubstantiated; reduction to avoid multiple recovery |
| | Legal fees | 38,968 | 27,510 | Claim adjusted for insufficient evidence of payment; part or all of the loss is not direct |
| | Hotel accommodation | 9,598 | 7,093 | Exchange rate adjustment |
| | EPIC and OCIC expenses | 8,561 | 1,149 | Claim adjusted as part or all of the underlying loss is unsubstantiated |
| TOTAL | | 178,051 | 118,820 | |

Annex III

Recommended awards for the first instalment of "E/F" claims

Reported by claimant name and category of loss

Claimant: GAN Incendie Accidents Compagnie Francaise

UNCC claim number: 4001878

Submitting entity: France

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Legal liabilities - British Airways passenger losses: | | | |
| | Payments to passengers | 120,924 | 83,068 | Claim adjusted as part or all of the underlying loss is unsubstantiated; reduction to avoid multiple recovery |
| | Legal fees | 38,968 | 27,510 | Claim adjusted for insufficient evidence of payment; part or all of the loss is not direct |
| | Hotel Accommodation | 9,598 | 7,093 | Exchange rate adjustment |
| | EPIC and OCIC expenses | 8,561 | 1,149 | Claim adjusted as part or all of the underlying loss is unsubstantiated |
| TOTAL | | 178,051 | 118,820 | |

Claimant: Compagnie D'Assurances Maritimes Aeriennes et Terrestres CAMAT

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

UNCC claim number: 4001879

Submitting entity: France

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Other tangible property - loss of aircraft | 700,713 | 651,700 | Claim adjusted as part or all of the underlying loss is unsubstantiated |
| Payment or relief to others | Legal liabilities - British Airways passenger losses: | | | |
| | Payments to passengers | 282,155 | 193,825 | Claim adjusted as part or all of the underlying loss is unsubstantiated; reduction to avoid multiple recovery |
| | Legal fees | 90,926 | 64,190 | Claim adjusted for insufficient evidence of payment; part or all of the loss is not direct |
| | Hotel accommodation | 22,395 | 16,551 | Exchange rate adjustment |
| | EPIC and OCIC expenses | 19,975 | 2,681 | Claim adjusted as part or all of the underlying loss is unsubstantiated |
| TOTAL | | 1,116,164 | 928,947 | |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

Claimant: National Insurance Company Limited

UNCC claim number: 4000292 - Sub claim No.1 (Lincon Leatherwear India)

Submitting entity: India

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Contractual losses - transhipment | 8,428 | 3,730 | Claim adjusted as part or all of the underlying loss is unsubstantiated |
| TOTAL | | 8,428 | 3,730 | |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

Claimant: National Insurance Company Limited

UNCC claim number: 4000292 - Sub claim No.2 (Overseas Carpets Limited)

Submitting entity: India

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Contractual losses - transhipment | 51,852 | 25,675 | Claim adjusted for insufficient evidence of the policy |
| TOTAL | | 51,852 | 25,675 | |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

**Claimant:** National Insurance Company Limited

**UNCC claim number:** 4000292 - Sub claim No.3 (Kashmir Arts)

**Submitting entity:** India

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Contractual losses - transhipment | 72,258 | 35,356 | Claim adjusted for insufficient evidence of the policy |
| TOTAL | | 72,258 | 35,356 | |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

Claimant: National Insurance Company Limited

UNCC claim number: 4000292 - Sub claim No.4 (Bhandari Hosiery Exports)

Submitting entity: India

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Contractual losses - transhipment | 11,304 | 3,993 | Claim adjusted for insufficient evidence of the policy; insufficient evidence of value |
| TOTAL | | 11,304 | 3,993 | |

Annex III

### Recommended awards for the first instalment of "E/F" claims

### Reported by claimant name and category of loss

Claimant: National Insurance Company Limited

UNCC claim number: 4000292 - Sub claim No.5 (Saraf Fabrics Limited)

Submitting entity: India

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment to relief to others | Contractual losses - transhipment | 7,017 | Nil | Claim denied as part or all of the underlying loss is unsubstantiated |
| TOTAL | | 7,017 | Nil | |

## Annex III

### Recommended awards for the first instalment of "E/F" claims

### Reported by claimant name and category of loss

Claimant: National Insurance Company Limited

UNCC claim number: 4000292 - Sub claim No.6 (Kapoor Sons)

Submitting entity: India

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Contractual losses - transhipment | 21,126 | 10,465 | Claim adjusted for insufficient evidence of the policy |
| TOTAL | | 21,126 | 10,465 | |

## Annex III

### Recommended awards for the first instalment of "E/F" claims

### Reported by claimant name and category of loss

Claimant: The New India Assurance Co. Ltd

UNCC claim number: 4000772

Submitting entity: India

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Contractual losses - transhipment | 36,521 | Nil | Claim denied as part or all of the underlying loss is unsubstantiated |
| TOTAL | | 36,521 | Nil | |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

Claimant: The New India Assurance Co. Ltd

UNCC claim number: 4000773

Submitting entity: India

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Contractual losses - transhipment | 7,738 | Nil | Claim denied as part or all of the underlying loss is unsubstantiated |
| TOTAL | | 7,738 | Nil | |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

Claimant: The New India Assurance Co. Ltd

UNCC claim number: 4000774

Submitting entity: India

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Contractual losses - transhipment | 15,920 | 3,577 | Claim adjusted for insufficient evidence of payment |
| TOTAL | | 15,920 | 3,577 | |

## Annex III
## Recommended awards for the first instalment of "E/F" claims
## Reported by claimant name and category of loss

Claimant: The New India Assurance Co. Ltd

UNCC claim number: 4000775

Submitting entity: India

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Contractual losses -transhipment | 10,729 | 7,714 | Claim adjusted for insufficient evidence of the policy |
| TOTAL | | 10,729 | 7,714 | |

## Annex III

### Recommended awards for the first instalment of "E/F" claims

### Reported by claimant name and category of loss

Claimant: The New India Assurance Co. Ltd

UNCC claim number: 4000776

Submitting entity: India

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Contractual losses - transhipment | 7,616 | 3,418 | Claim adjusted for insufficient evidence of the policy |
| TOTAL | | 7,616 | 3,418 | |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

Claimant: The New India Assurance Co. Ltd

UNCC claim number: 4000777

Submitting entity: India

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Contractual losses - transhipment | 8,034 | 3,606 | Claim adjusted for insufficient evidence of the policy |
| TOTAL | | 8,034 | 3,606 | |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

Claimant: The New India Assurance Co. Ltd

UNCC claim number: 4000778

Submitting entity: India

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Contractual losses - transhipment | 7,616 | 3,418 | Claim adjusted for insufficient evidence of the policy |
| TOTAL | | 7,616 | 3,418 | |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant: | The New India Assurance Co. Ltd |
| UNCC claim number: | 4000779 |
| Submitting entity: | India |

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Contractual losses - transhipment | 7,999 | Nil | Claim denied as part or all of the underlying loss is unsubstantiated |
| TOTAL | | 7,999 | Nil | |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

Claimant: The New India Assurance Co. Ltd

UNCC claim number: 4000780

Submitting entity: India

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Contractual losses - transhipment: | | | |
| | Loss of goods | 5,096 | 4,333 | Claim adjusted for insufficient evidence of the policy |
| | Agency fees and settlement costs | 97 | Nil | Claim denied as part or all of the loss is not direct |
| TOTAL | | 5,193 | 4,333 | |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

Claimant: The New India Assurance Co Ltd.

UNCC claim number: 4000781

Submitting entity: India

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Contractual losses - transhipment | 11,687 | Nil | Claim denied as part or all of the underlying loss is unsubstantiated |
| TOTAL | | 11,687 | Nil | |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

Claimant: The New India Assurance Co. Ltd

UNCC claim number: 4000782

Submitting entity: India

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Contractual losses - transhipment | 8,850 | Nil | Claim denied as part or all of the underlying loss is unsubstantiated |
| TOTAL | | 8,850 | Nil | |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

Claimant: Credit Guarantee Insurance Corporation of Africa Limited

UNCC claim number: 4001711 - Sub-claim 1 (Baltac Inc.)

Submitting entity: South Africa

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Contractual losses - export credit | 1,321,997 | Nil | "Arising prior to" exclusion |
| TOTAL | | 1,321,997 | Nil | |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

Claimant: Credit Guarantee Insurance Corporation of Africa Limited

UNCC claim number: 4001711 - Sub-claim 2 (Baltac Inc.)

Submitting entity: South Africa

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Contractual losses - export credit | 131,918,849 | Nil | "Arising prior to" exclusion |
| TOTAL | | 131,918,849 | Nil | |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

Claimant: Credit Guarantee Insurance Corporation of Africa Limited

UNCC claim number: 4001711 - Sub-claim 3 (Baltac Inc.)

Submitting entity: South Africa

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Contractual losses - export credit | 493,198 | Nil | 1st and 2nd shipments: "arising prior to" exclusion; 3rd shipment: part or all of the underlying loss is unsubstantiated |
| TOTAL | | 493,198 | Nil | |

## Annex III

### Recommended awards for the first instalment of "E/F" claims

### Reported by claimant name and category of loss

Claimant: Credit Guarantee Insurance Corporation of Africa Limited

UNCC claim number: 4001711 - Sub-claim 4 (Reunert Technology Systems (Pty) Ltd)

Submitting entity: South Africa

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Contractual losses - export credit | 22,550,177 | Nil | "Arising prior to" exclusion |
| TOTAL | | 22,550,177 | Nil | |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

### Reported by claimant name and category of loss

Claimant: Credit Guarantee Insurance Corporation of Africa Limited

UNCC claim number: 4001711 - Sub-claim 5 (South African Co-operative Citrus Exchange Ltd)

Submitting entity: South Africa

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Contractual losses - export credit | 996,656 | Nil | Part or all of the loss is not direct. |
| TOTAL | | 996,656 | Nil | |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

Claimant: Commercial Union Assurance PLC

UNCC claim number: 4001466

Submitting entity: Spain

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Contractual losses - export credit | 84,800 | Nil | Claim denied as no standing to bring claim |
| TOTAL | | 84,800 | Nil | |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

Claimant: European General Reinsurance Company

UNCC claim number: 4001528

Submitting entity: Switzerland

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Legal liabilities - employer's liability | 4,959,349 | Nil | Claim denied as insufficient evidence that the policy covered the underlying loss |
| TOTAL | | 4,959,349 | Nil | |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant: | Hong Kong Export Credit Insurance Corporation |
| UNCC claim number: | 4001961 - Sub claim No.1 (BRP Ltd) |
| Submitting entity: | United Kingdom |

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Contractual losses - export credit | 17,032 | Nil | Claim denied as part or all of the loss is not direct |
| TOTAL | | 17,032 | Nil | |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

Claimant: Hong Kong Export Credit Insurance Corporation

UNCC claim number: 4001961 - Sub claim No.2 (R E Dietz Company Ltd)

Submitting entity: United Kingdom

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Contractual losses - export credit | 7,059 | Nil | Claim denied as part or all of the loss is not direct |
| TOTAL | | 7,059 | Nil | |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

Claimant: Hong Kong Export Credit Insurance Corporation

UNCC claim number: 4001961 - Sub claim No.3 (Sing Fai Trading Company)

Submitting entity: United Kingdom

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Contractual losses - export credit | 12,081 | 3,605 | Claim adjusted as part or all of the underlying loss is unsubstantiated |
| TOTAL | | 12,081 | 3,605 | |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant: | Hong Kong Export Credit Insurance Corporation |
| UNCC claim number: | 4001961 - Sub claim No.4 (N L Merchandising Company Ltd) |
| Submitting entity: | United Kingdom |

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Contractual losses - export credit | 22,541 | 17,938 | Claim adjusted as part or all of the underlying loss is unsubstantiated |
| TOTAL | | 22,541 | 17,938 | |

# Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant: | Hong Kong Export Credit Insurance Corporation |
| UNCC claim number: | 4001961 - Sub claim No.5 (Kar Lee Trading Company Ltd) |
| Submitting entity: | United Kingdom |

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Contractual losses - export credit | 11,588 | 8,652 | Claim adjusted as part or all of the underlying loss is unsubstantiated; insufficient evidence of payment |
| TOTAL | | 11,588 | 8,652 | |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant: | Hong Kong Export Credit Insurance Corporation |
| UNCC claim number: | 4001961 - Sub claim No.6 (Kar Lee Trading Company Ltd) |
| Submitting entity: | United Kingdom |

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Contractual losses - export credit | 2,399 | 1,791 | Claim adjusted as part or all of the underlying loss is unsubstantiated |
| TOTAL | | 2,399 | 1,791 | |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

Claimant: Hong Kong Export Credit Insurance Corporation

UNCC claim number: 4001961 - Sub claim No.7 (Kar Lee Trading Company Ltd)

Submitting entity: United Kingdom

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Contractual losses - export credit | 134,090 | 79,686 | Claim adjusted as part or all of the underlying loss is unsubstantiated (consignments 1-5); insufficient evidence that the policy covered the underlying loss (consignments 6 & 7) |
| TOTAL |  | 134,090 | 79,686 |  |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

Claimant: Hong Kong Export Credit Insurance Corporation

UNCC claim number: 4001961 - Sub claim No.8 (N L Merchandising Company Ltd)

Submitting entity: United Kingdom

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Contractual losses- export credit | 40,593 | 8,076 | Claim adjusted as part or all of the underlying loss is unsubstantiated |
| TOTAL | | 40,593 | 8,076 | |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

Claimant: Hong Kong Export Credit Insurance Corporation

UNCC claim number: 4001961 - Sub claim No.9 (Stallion Safety Supply Company)

Submitting entity: United Kingdom

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Contractual losses - export credit | 2,400 | 1,790 | Claim adjusted as part or all of the underlying loss is unsubstantiated |
| TOTAL | | 2,400 | 1,790 | |

## Annex III

### Recommended awards for the first instalment of "E/F" claims

### Reported by claimant name and category of loss

Claimant: Hong Kong Export Credit Insurance Corporation

UNCC claim number: 4001961 - Sub claim No.10 (Kar Lee Trading Company)

Submitting entity: United Kingdom

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Contractual losses - export credit | 7,061 | Nil | Claim denied as insufficient evidence that the policy covered the underlying loss |
| TOTAL | | 7,061 | Nil | |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

Claimant: Hong Kong Export Credit Insurance Corporation

UNCC claim number: 4001961 - Sub claim No.11 (Chandra Industries)

Submitting entity: United Kingdom

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Contractual losses - export credit | 32,217 | Nil | Claim denied as insufficient evidence that the policy covered the underlying loss |
| TOTAL | | 32,217 | Nil | |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

Claimant: Hong Kong Export Credit Insurance Corporation

UNCC claim number: 4001961 - Sub claim No.12 (Chandra Industries)

Submitting entity: United Kingdom

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Contractual losses - export credit | 32,216 | Nil | Claim denied as insufficient evidence that the policy covered the underlying loss |
| TOTAL | | 32,216 | Nil | |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

Claimant: Syndicate Number 488 at Lloyd's

UNCC claim number: 4002127

Submitting entity: United Kingdom

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Other tangible property - loss of aircraft | 18,861,990 | 17,560,513 | Claim adjusted for insufficient evidence of payment; part or all of the underlying loss is unsubstantiated |
| TOTAL | | 18,861,990 | 17,560,513 | |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

Claimant: Hellenic Mutual War Risks Association (Bermuda) Limited

UNCC claim number: 4002218

Submitting entity: United Kingdom

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Other tangible property - loss of vessel | 4,865,000 | 2,246,750 | Reduction to reflect actual value |
| Payment or relief to others | Legal liabilities - losses associated with loss of vessel: | | | |
| | Loss of use | 1,000,430 | Nil | Claim denied as part or all of the underlying loss is unsubstantiated |
| | Running expenses | 2,000,838 | 142,245 | Part or all of the loss is not direct; part or all of the underlying loss is unsubstantiated |
| | Mitigation payments | 958,371 | 400,430 | Part or all of the loss is not direct; part or all of the underlying loss is unsubstantiated |
| TOTAL (net of claim preparation costs) | | 8,824,639 | 2,789,425 | |
| Other losses | Claim preparation costs | 8,655 | N/A | Claim preparation costs |

# Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

Claimant: Syndicate 724 at Lloyd's

UNCC claim number: 4002225

Submitting entity: United Kingdom

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Other tangible property - loss of vessel | 4,000,000 | 3,400,000 | Claim adjusted for insufficient evidence of payment |
| TOTAL | | 4,000,000 | 3,400,000 | |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

Claimant: The British Aviation Insurance Company Limited

UNCC claim number: 4002266

Submitting entity: United Kingdom

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Legal liabilities - British Airways passenger losses: | | | |
| | Payments to passengers | 6,464,737 | 4,690,215 | Claim adjusted as part or all of the underlying loss is unsubstantiated; reduction to avoid multiple recovery |
| | Legal fees | 1,876,899 | 1,530,011 | Claim adjusted for insufficient evidence of payment; part or all of the loss is not direct |
| | Hotel accommodation | 448,264 | 392,488 | Exchange rate adjustment |
| | EPIC and OCIC expenses | 399,819 | 63,587 | Claim adjusted as part or all of the underlying loss is unsubstantiated |
| TOTAL | | 9,189,719 | 6,676,301 | |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

Claimant: Syndicate 10 at Lloyd's

UNCC claim number: 4002271

Submitting entity: United Kingdom

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Other losses | 2,705,954 | Nil | Claim denied as part or all of the underlying loss is unsubstantiated |
| TOTAL | | 2,705,954 | Nil | |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

Claimant: Syndicate 662 at Lloyd's

UNCC claim number: 4002277

Submitting entity: United Kingdom

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Other tangible property - loss of vessel | 2,064,024 | 1,438,914 | Claim adjusted for insufficient evidence of payment |
|  | Reinsurance commission | 39 | Nil | Claim denied as part or all of the loss is not direct |
| TOTAL |  | 2,064,063 | 1,438,914 |  |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

Claimant: A R Mountain and Son Limited

UNCC claim number: 4002308

Submitting entity: United Kingdom

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Legal liabilities - salvage fees | 395,246 | 355,722 | Claim adjusted for insufficient evidence of payment |
| Other Losses | Legal and investigation costs | 118,803 | 89,482 | Claim adjusted for insufficient evidence of payment |
| TOTAL (net of claim preparation costs) | | 514,049 | 445,204 | |
| Other losses | Claim preparation costs | 21,863 | N/A | Claim preparation costs |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant: | Eagle Star Reinsurance Co Ltd |
| UNCC claim number: | 4002309 - Sub claim No.1 (Burton Son & Saunders Ltd) |
| Submitting entity: | United Kingdom |

| Category of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Contractual losses - transhipment | 4,795 | Nil | Claim denied as part or all of the loss is not direct |
| TOTAL | | 4,795 | Nil | |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

Claimant: Eagle Star Reinsurance Co Ltd

UNCC claim number: 4002309 - Sub claim No.2 (Great Universal Stores Merchandise Corporation Ltd)

Submitting entity: United Kingdom

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Contractual losses - transhipment | 45,207 | 6,329 | Claim adjusted as part or all of the underlying loss is unsubstantiated |
|  | Loss adjusters' fees | 224 | Nil | Claim denied as part or all of the underlying loss is unsubstantiated |
| TOTAL |  | 45,431 | 6,329 |  |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant: | Eagle Star Reinsurance Co Ltd |
| UNCC claim number: | 4002309 - Sub claim No.3 (K L Watch Company Ltd) |
| Submitting entity: | United Kingdom |

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Contractual losses - transhipment | 38,000 | Nil | Claim denied as part or all of the loss is not direct |
| TOTAL | | 38,000 | Nil | |

## Annex III

## Recommended awards for the first instalment of 'E/F' claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant: | American Cargo War Risk Reinsurance Exchange |
| UNCC claim number: | 4000590 - Sub claim No.1 (Laissez-Fair Inc.) |
| Submitting entity: | United States of America |

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Contractual losses - transhipment | 18,331 | 14,998 | Claim adjusted for insufficient evidence of payment |
| TOTAL | | 18,331 | 14,998 | |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

Claimant: American Cargo War Risk Reinsurance Exchange

UNCC claim number: 4000590 - Sub Claim No.2 (Wheeler-Rex Manufacturing Co.)

Submitting entity: United States of America

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Contractual losses - transhipment | 4,400 | 2,826 | Claim adjusted for insufficient evidence of the policy; insufficient evidence of payment |
| TOTAL | | 4,400 | 2,826 | |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant: | Citicorp Marine Management Inc. |
| UNCC claim number: | 4000598 |
| Submitting entity: | United States of America |

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Contractual losses - transhipment | 43,401 | 33,537 | Claim adjusted for insufficient evidence of payment |
| TOTAL | | 43,401 | 33,537 | |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

Claimant: Great American Insurance Company

UNCC claim number: 4000606

Submitting entity: United States of America

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Contractual losses - transhipment | 25,586 | 17,203 | Claim adjusted as part or all of the loss is not direct; deduction for uninsured amount |
| TOTAL | | 25,586 | 17,203 | |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

Claimant: The St. Paul Fire & Marine Insurance Co. Ltd.

UNCC claim number: 4000626

Submitting entity: United States of America

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Contractual losses - transhipment | 45,334 | 45,334 | |
| TOTAL | | 45,334 | 45,334 | |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant: | The Insurance Company of the State of Pennsylvania |
| UNCC claim number: | 4002355 - Sub claim No.1 (Dyncorp - Mr J Perdue) |
| Submitting entity: | United States of America |

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | 223. Legal liabilities - workers' compensation | 15,232 | Nil | Claim denied for military operations |
| TOTAL | | 15,232 | Nil | |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

Claimant: The Insurance Company of the State of Pennsylvania

UNCC claim number: 4002355 - Sub claim No.2 (Dyncorp - Mr M Debenedetto)

Submitting entity: United States of America

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | 224. Legal liabilities - workers' compensation | 6,655 | Nil | Claim denied for military operations |
| TOTAL | | 6,655 | Nil | |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

Claimant: The Insurance Company of the State of Pennsylvania

UNCC claim number: 4002355 - Sub claim No.3 (Dyncorp - Mr W Welch)

Submitting entity: United States of America

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | 225. Legal liabilities - workers' compensation | 329,253 | Nil | Claim denied for military operations |
| TOTAL | | 329,253 | Nil | |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

Claimant: The Insurance Company of the State of Pennsylvania

UNCC claim number: 4002355 - Sub claim No.4 (Dyncorp - Mr C Bric)

Submitting entity: United States of America

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Legal liabilities - workers' compensation | 12,569 | Nil | Claim denied for military operations |
| TOTAL | | 12,569 | Nil | |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant: | The Insurance Company of the State of Pennsylvania |
| UNCC claim number: | 4002355 - Sub claim No.5 (Dyncorp - Mr S Huffman) |
| Submitting entity: | United States of America |

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | 226. Legal liabilities - workers' compensation | 5,990 | Nil | Claim denied for military operations |
| TOTAL | | 5,990 | Nil | |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

Claimant: The Insurance Company of the State of Pennsylvania

UNCC claim number: 4002355 - Sub claim No.6 (Dyncorp - Mr C Sorrels)

Submitting entity: United States of America

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | 227. Legal liabilities - workers' compensation | 28,834 | Nil | Claim denied for military operations |
| TOTAL | | 28,834 | Nil | |

## Annex III
## Recommended awards for the first instalment of "E/F" claims
## Reported by claimant name and category of loss

Claimant: The Insurance Company of the State of Pennsylvania

UNCC claim number: 4002355 - Sub claim No.7 (Bechtel Group Inc. - Mr L Waldon)

Submitting entity: United States of America

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Legal liabilities - workers' compensation | 375 | Nil | Claim denied as part or all of the underlying loss is unsubstantiated |
| TOTAL |  | 375 | Nil |  |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

Claimant: The Insurance Company of the State of Pennsylvania

UNCC claim number: 4002355 - Sub claim No.8 (Bechtel Group Inc. - Mr D Morris)

Submitting entity: United States of America

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Legal liabilities - workers' compensation | 145,044 | Nil | Claim denied as part or all of the underlying loss is unsubstantiated |
| TOTAL | | 145,044 | Nil | |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

Claimant: The Insurance Company of the State of Pennsylvania

UNCC claim number: 4002355 - Sub claim No.9 (Bechtel Group Inc. - Mr A Mason)

Submitting entity: United States of America

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Legal liabilities - workers' compensation | 1,946 | Nil | Claim denied as part or all of the underlying loss is unsubstantiated |
| TOTAL | | 1,946 | Nil | |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

Claimant: The Insurance Company of the State of Pennsylvania

UNCC claim number: 4002355 - Sub claim No.10 (Bechtel Group Inc. - Mr D Forbes)

Submitting entity: United States of America

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Legal liabilities - workers' compensation | 11,265 | Nil | Claim denied as part or all of the underlying loss is unsubstantiated |
| TOTAL | | 11,265 | Nil | |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

Claimant: The Insurance Company of the State of Pennsylvania

UNCC claim number: 4002355 - Sub claim No.11 (Bechtel Group Inc. - Mr I Mackenzie)

Submitting entity: United States of America

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Legal liabilities - workers' compensation | 50,000 | Nil | Claim denied as part or all of the underlying loss is unsubstantiated |
| TOTAL | | 50,000 | Nil | |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

Claimant: The Insurance Company of the State of Pennsylvania

UNCC claim number: 4002355 - Sub claim No.12 (Bechtel Group Inc. - Mr R Emblings)

Submitting entity: United States of America

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Legal liabilities - workers' compensation | 25,000 | Nil | Claim denied as part or all of the underlying loss is unsubstantiated |
| TOTAL | | 25,000 | Nil | |

## Annex III
## Recommended awards for the first instalment of "E/F" claims
## Reported by claimant name and category of loss

Claimant: The Insurance Company of the State of Pennsylvania

UNCC claim number: 4002355 - Sub claim No.13 (Marshall Coleman et al)

Submitting entity: United States of America

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Legal liabilities - workers' compensation | 5,048 | Nil | Claim denied as part or all of the underlying loss is unsubstantiated |
| TOTAL | | 5,048 | Nil | |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant: | The Insurance Company of the State of Pennsylvania |
| UNCC claim number: | 4002355 - Sub claim No.14 (Science Application International Corporation - Mr S Saleh) |
| Submitting entity: | United States of America |

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Legal liabilities - workers' compensation | 25,000 | Nil | Claim denied as part or all of the underlying loss is unsubstantiated |
| TOTAL | | 25,000 | Nil | |

## Annex III
## Recommended awards for the first instalment of "E/F" claims
## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant: | American Life Insurance Company |
| UNCC claim number: | 4002488 |
| Submitting entity: | United States of America |

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Other losses | 15,600 | 13,839 | Claim adjusted as part or all of the loss is not direct |
| TOTAL | | 15,600 | 13,839 | |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

Claimant: Commercial Union Insurance Company

UNCC claim number: 4002502 Sub claim No.1 (Khazindar, Khazindar Est. & Khazindar Distributing Est.)

Submitting entity: United States of America

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Contractual losses - transhipment | 2,898 | 2,371 | Claim adjusted for insufficient evidence of payment |
| TOTAL | | 2,898 | 2,371 | |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

Claimant: Commercial Union Insurance Company

UNCC claim number: 4002502 Sub claim No.2 (Foster Needle Company Inc.)

Submitting entity: United States of America

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Contractual losses - transhipment | 2,647 | 1,203 | Claim adjusted for insufficient evidence of payment; insufficient evidence of the policy. |
| TOTAL | | 2,647 | 1,203 | |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

Claimant: National Union Fire Insurance Company of Pittsburgh

UNCC claim number: 4002564 - Sub claim No.1 (Ford Motor Companies and Subsidiaries)

Submitting entity: United States of America

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Other losses | 102,787 | Nil | Claim denied as part or all of the underlying loss is unsubstantiated |
| TOTAL | | 102,787 | Nil | |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

Claimant: National Union Fire Insurance Company of Pittsburgh

UNCC claim number: 4002564 - Sub claim No.2 (Litton Industries Inc.)

Submitting entity: United States of America

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Other losses | 74,117 | Nil | Claim denied as part or all of the underlying loss is unsubstantiated |
| TOTAL |  | 74,117 | Nil |  |

## Annex III

### Recommended awards for the first instalment of "E/F" claims

### Reported by claimant name and category of loss

| | |
|---|---|
| Claimant: | National Union Fire Insurance Company of Pittsburgh |
| UNCC claim number: | 4002564 - Sub claim No.3 (Lockheed Corporation) |
| Submitting entity: | United States of America |

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Other losses | 71,545 | Nil | Claim denied as part or all of the underlying loss is unsubstantiated; insufficient evidence that the policy covered the underlying loss |
| TOTAL | | 71,545 | Nil | |

## Annex III
## Recommended awards for the first instalment of "E/F" claims
### Reported by claimant name and category of loss

Claimant: National Union Fire Insurance Company of Pittsburgh

UNCC claim number: 4002564 - Sub claim No.4 (ABB)

Submitting entity: United States of America

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Other losses | 410,787 | Nil | Claim denied as part or all of the underlying loss is unsubstantiated |
| TOTAL | | 410,787 | Nil | |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

| | |
|---|---|
| Claimant: | National Union Fire Insurance Company of Pittsburgh |
| UNCC claim number: | 4002564 - Sub claim No.5 (AECOM Technology Corporation) |
| Submitting entity: | United States of America |

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Other losses | 760,000 | Nil | Claim denied as part or all of the underlying loss is unsubstantiated |
| TOTAL | | 760,000 | Nil | |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

Claimant: National Union Fire Insurance Company of Pittsburgh

UNCC claim number: 4002564 - Sub claim No.6 (AAI Corporation)

Submitting entity: United States of America

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Other losses: | | | |
| | Salary costs | 34,896 | 8,724 | Claim adjusted as part or all of the underlying loss is unsubstantiated |
| | Loss of vehicles | 35,667 | Nil | Claim denied as part or all of the loss is not direct |
| | Funds used by detainee | 50,000 | Nil | Claim denied as part or all of the loss is not direct |
| TOTAL | | 120,563 | 8,724 | |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

Claimant: National Union Fire Insurance Company of Pittsburgh

UNCC claim number: 4002564 - Sub claim No.7 (Harris Corporation)

Submitting entity: United States of America

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Contractual losses - wrongful calling of guarantee | 204,230 | Nil | Claim denied as part or all of the loss is not direct |
| TOTAL | | 204,230 | Nil | |

## Annex III
## Recommended awards for the first instalment of "E/F" claims
## Reported by claimant name and category of loss

Claimant: New Hampshire Insurance Company/ American International Group Inc.

UNCC claim number: 4002566 - Sub claim No.1 (Van Oord International)

Submitting entity: United States of America

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Contractual losses - frustration of contract | 2,185,757 | Nil | Claim denied as part or all of the loss is not direct |
| TOTAL | | 2,185,757 | Nil | |

## Annex III

### Recommended awards for the first instalment of "E/F" claims

### Reported by claimant name and category of loss

Claimant: New Hampshire Insurance Company/ American International Group Inc.

UNCC claim number: 4002566 - Sub claim No.2 (Solvochem Holland NV)

Submitting entity: United States of America

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Contractual losses - frustration of contract | 297,652 | Nil | "Arising prior to" exclusion (consignments 1-3); insufficient evidence of the policy (consignments 4 and 5) |
| TOTAL | | 297,652 | Nil | |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

Claimant: New Hampshire Insurance Company/ American International Group Inc.

UNCC claim number: 4002566 - Sub claim No.3 (ICI Pharmaceuticals)

Submitting entity: United States of America

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Contractual losses - frustration of contract | 93,578 | 50,480 | Claim adjusted for insufficient evidence of the policy |
| TOTAL | | 93,578 | 50,480 | |

## Annex III

### Recommended awards for the first instalment of "E/F" claims

### Reported by claimant name and category of loss

Claimant: New Hampshire Insurance Company/ American International Group Inc.

UNCC claim number: 4002566 - Sub claim No.4 (Gebruder Kulenkampff AG)

Submitting entity: United States of America

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Contractual losses - frustration of contract | 150,000 | Nil | "Arising prior to" exclusion |
| TOTAL | | 150,000 | Nil | |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

Claimant: New Hampshire Insurance Company/ American International Group Inc.

UNCC claim number: 4002566 - Sub claim No.5 (APV plc)

Submitting entity: United States of America

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Other losses | 17,610 | 2,922 | Claim adjusted as part or all of the underlying loss is unsubstantiated |
| TOTAL | | 17,610 | 2,922 | |

## Annex III

## Recommended awards for the first instalment of "E/F" claims

## Reported by claimant name and category of loss

Claimant: New Hampshire Insurance Company/ American International Group Inc.

UNCC claim number: 4002566 - Sub claim No.6 (Kuwait Petroleum Corporation et al)

Submitting entity: United States of America

| Type of loss | Category of loss | Amount claimed (USD) | Amount recommended (USD) | Comments |
|---|---|---|---|---|
| Payment or relief to others | Legal liabilities - employer's liability | 505,661 | Nil | Sub-claims 6(A)- 6(D), 6(F)-6(I) denied as part or all of the loss is not direct; sub-claim 6(E) denied as part or all of the underlying loss is unsubstantiated; sub-claim 6(J) denied for insufficient evidence of the policy |
| TOTAL | | 505,661 | Nil | |

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# Annex XII

## Decision concerning the first instalment of E/F claims taken by the Governing Council of the United Nations Compensation Commission at its 105th meeting, held on 15 March 2001 at Geneva*

The Governing Council,

Having received, in accordance with article 38 of the Provisional Rules for Claims Procedure ("the Rules"), the report and recommendations made by the panel of Commissioners concerning the first instalment of "E/F" claims, covering 40 claims, 1/

Having received also information from the secretariat in a note on precedents in international law with reference to the principle of subrogation with regard to claims from insurance companies and the jurisprudence of the Commission on direct losses,

1. Approves the recommendations made by the panel of Commissioners, and, accordingly,

2. Decides, pursuant to article 40 of the Rules, to approve the amounts of the recommended awards concerning the claims covered in the report. The aggregate amounts per country, based on the recommendations contained in annex II of the report, are as follows:

---

* Previously issued as document S/AC.26/Dec.120 (2001).

1/ The text of the report appears in document S/AC.26/2001/6 (annex XI above).

| Country | Number of claims recommended for payment | Number of claims not recommended for payment | Amount of compensation claimed (USD) | Amount of compensation recommended (USD) |
|---|---|---|---|---|
| Australia | 1 | - | 290,393 | 62,673 |
| Bahrain | 1 | - | 319,149 | 319,149 |
| Belgium | 1 | - | 210,000 | 195,510 |
| Denmark | - | 1 | 180,000,000 | nil |
| France | 3 | - | 1,472,267 | 1,166,587 |
| India | 7 | 5 | 299,889 | 105,285 |
| South Africa | - | 1 | 157,280,877 | nil |
| Spain | - | 1 | 84,800 | nil |
| Switzerland | - | 1 | 4,959,349 | nil |
| United Kingdom | 8 | 1 | 46,600,434 | 32,438,224 |
| United States | 8 | 1 | 5,814,694 | 193,437 |
| Total | 29 | 11 | 397,331,852 | 34,480,865 |

3. Reaffirms that when funds become available payments shall be made in accordance with decision 100 (S/AC.26/Dec.100 (2000)),

4. Recalls that when payments are made in accordance with decision 100, and pursuant to the terms of decision 18 (S/AC.26/Dec.18 (1994)), Governments shall distribute amounts received to the designated claimants in respect of approved awards within six months of receiving payment, and shall, not later than three months after the expiration of this time limit, provide information on such distribution,

5. Requests the Executive Secretary to provide a copy of the report to the Secretary-General, to the Government of the Republic of Iraq and to each respective Government.

# Annex XIII

## Report and recommendations made by the Panel of Commissioners concerning the second instalment of F3 claims*

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* Previously issued as document S/AC.26/2001/7.

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## GLOSSARY

| | |
|---|---|
| "claimant" | Any Ministry or other entity of the Government of Kuwait on whose behalf the Government of Kuwait has filed an "F3" claim |
| "Commission" or "UNCC" | United Nations Compensation Commission |
| "decision" | A decision of the Governing Council of the Commission |
| "emergency period" | The period from 27 February 1991 until 31 May 1991, as used by the Government of Kuwait to denote the period during which reconstruction and repair work commenced |
| "expert consultants" | The expert accounting and loss adjusting consultants to the Panel (see paragraph 8 of the annex) |
| ""F1" Panel" | The Panel of Commissioners appointed to review the "F1" claims, being certain government claims predominantly for losses related to departure and evacuation costs or damage to physical property, and claims filed by international organizations |
| ""F3" claims" | The claims filed with the Commission under the Commission's claim form entitled "Claim Form for Governments and International Organizations" by the Government of the State of Kuwait, except those reviewed by the "F1" Panel and those which the Commission has classified as environmental claims (see paragraphs 1 and 2) |

| | |
|---|---|
| "Farah report" | "Report to the Secretary-General on the scope and nature of damage inflicted on the Kuwaiti infrastructure during the Iraqi occupation" (S/22535) |
| "First "F3" Report" | "Report and recommendations made by the Panel of Commissioners concerning the first instalment of "F3" claims" (S/AC.26/1999/24) |
| "first instalment claims" | Those claims considered by the Panel in the First "F3" Report |
| "Form F" | The Commission's claim form entitled "Claim Form for Governments and International Organizations" |
| "GCC" or "Gulf Cooperation Council" | Cooperation Council for the Arab States of the Gulf, comprised of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates |
| "Government of Kuwait" or "Government" | The Government of the State of Kuwait |
| "Iraq" | The Government of the Republic of Iraq |
| "KERO" | Kuwait Emergency Reconstruction Office |
| "level of materiality" | See paragraphs 120 to 123 of the annex |
| "liberation" | The liberation on 26 February 1991 of the State of Kuwait from Iraq's invasion and occupation |
| "non-material items" | Those parts of the "F3" claims that fall below the level of materiality adopted by the Panel. See paragraph 120 of the annex |

| | |
|---|---|
| "occupation period" | The period from 2 August 1990 until 26 February 1991 |
| "PAAC" | Public Authority for the Assessment of Compensation for Damages Resulting from Iraqi Aggression |
| "pre-paid rent" | See paragraph 83 of the annex |
| "principal claim amount" | See paragraph 4 |
| "relief paid to employees" | See paragraph 45 of this Report and paragraph 32 of the annex |
| "Rules" | The Commission's Provisional Rules for Claims Procedure, a text of which is annexed to Governing Council decision 10 (S/AC.26/1992/10) |
| "second instalment claims" | See paragraph 3 |
| "secretariat" | The secretariat of the Commission |
| "Social Security Fund" | See paragraph 45 |
| "US$" | United States dollars |

## Introduction

1. At its twenty-eighth and thirty-third sessions, held from 29 June to 1 July 1998 and 28 to 30 September 1999, respectively, the Governing Council of the United Nations Compensation Commission (the "Commission") appointed a Panel of Commissioners comprising Messrs L. Yves Fortier (Chairman), Andrew Jacovides and Reiner Soll to review this second, and subsequent, instalments of those claims filed by the Government of the State of Kuwait (the "Government of Kuwait"), known as the "F3" claims.

2. The "F3" claims comprise all of the Government of Kuwait's claims, other than those reviewed by the "F1" Panel and those which the Commission has classified as environmental claims. The "F3" claims have been presented by the Government of Kuwait on behalf of its various Ministries and other entities. There are 62 such claims. Each claim seeks compensation for direct loss, damage or injury alleged to be a result of Iraq's invasion and occupation of Kuwait. 1/

3. The second instalment of the "F3" claims, comprising 21 claims (the "second instalment claims"), was submitted to the Panel on 14 September 1999, in accordance with article 32 of the Provisional Rules for Claims Procedure (the "Rules"). 2/ This report contains the Panel's recommendations to the Governing Council on these claims, and is issued under article 38(e) of the Rules. The Panel intends to review the remaining "F3" claims in one further instalment.

## I. OVERVIEW OF THE SECOND INSTALMENT CLAIMS

4. The second instalment claims seek compensation for losses totalling US$4,572,908,523 plus interest of US$726,928,049. The amount claimed in each claim is set out in the table below. The Panel will refer to the total amount claimed in each claim, excluding interest, as the "principal claim amount". The Panel's findings in respect of the second instalment claims (in section IV below) include a tabular breakdown of each second instalment claim that sets out the amounts claimed, including interest, and the amounts recommended.

Table 1. Summary of the second instalment claims

| Claimant | Short name of claimant (if different) | UNCC claim number | Government claim number | Principal claim amount (US$) a/ | Interest (US$) | Amount claimed including interest (US$) |
|---|---|---|---|---|---|---|
| Ministry of Finance - Kuwait Emergency and Recovery Program |  | 5000018 | 1 | 533,472,120 | 84,770,912 | 618,243,032 |
| Kuwait Institute for Scientific Research |  | 5000039 | 3 | 390,343,692 | 62,027,217 | 452,370,909 |
| Ministry of Public Works - Bayan Palace, Amiri Diwan, Telecommunications Tower, Audit Bureau, and MEW-MPW Headquarters construction and repair projects | Ministry of Public Works (Bayan Palace) | 5000040 | 4 | 232,874,040 | 37,008,640 | 269,882,680 |
| Ministry of Electricity and Water - Stores Department, Communications Systems, Emergency Electrical Department, Primary Substations, and Water Division | Ministry of Electricity and Water (Stores Department) | 5000042 | 6 | 362,234,083 | 57,566,160 | 419,800,243 |
| Ministry of Defense - Navy Fast Attack Craft | Ministry of Defense (Fast Attack) | 5000110 | 12 | 483,440,514 | 76,827,960 | 560,268,474 |

| Claimant | Short name of claimant (if different) | UNCC claim number | Government claim number | Principal claim amount (US$) a/ | Interest (US$) | Amount claimed including interest (US$) |
|---|---|---|---|---|---|---|
| Ministry of Electricity and Water - Power Plants, Underground Cables and Overhead Lines Maintenance Department, Electrical Network Projects Construction Department, Shuwaikh Distillation Facilities, Salaries, and Computer Center | Ministry of Electricity and Water (Power Plants) | 5000111 | 13 | 606,672,157 | 96,412,240 | 703,084,397 |
| Ministry of Information - Dar al-Athar al-Islamiyya Collection | Ministry of Information | 5000114 | 16 | 61,036,607 | 9,699,920 | 70,736,527 |
| Ministry of Public Works - Mishref Neighborhood Center, Kuwait University, Old Sief Palace, Government Testing Center, Computers, Stores, Equipment, Furniture, Salaries | Ministry of Public Works (Mishref Neighborhood Center) | 5000115 | 17 | 79,446,364 | 12,625,440 | 92,071,804 |
| Ministry of Defense - Reconstruction of Naval Base and Support Facilities | Ministry of Defense (Naval Base) | 5000139 | 22 | 63,453,966 | 10,083,880 | 73,537,846 |
| Kuwait University - Tangible Property Losses and Payment or Relief to Others | Kuwait University | 5000140 | 23 | 264,379,603 | 42,015,200 | 306,394,803 |

| Claimant | Short name of claimant (if different) | UNCC claim number | Government claim number | Principal claim amount (US$) a/ | Interest (US$) | Amount claimed including interest (US$) |
|---|---|---|---|---|---|---|
| Ministry of Oil | | 5000144 | 27 | 7,882,908 | 1,252,800 | 9,135,708 |
| Kuwait Municipality | | 5000147 | 30 | 196,459,271 | 31,221,400 | 227,680,671 |
| Ministry of Public Works - Buildings Construction Department, Local Roads Construction Department, Motorways Department, Sanitation Department, Buildings and Roads Maintenance, and Bubiyan Bridge | Ministry of Public Works (Buildings Construction Department) | 5000159 | 31 | 177,026,963 | 28,133,480 | 205,160,443 |
| Ministry of Health | | 5000164 | 36 | 422,193,464 | 67,095,560 | 489,289,024 |
| Ministry of Planning | | 5000165 | 37 | 34,053,732 | 5,411,400 | 39,465,132 |
| Environment Protection Council | | 5000166 | 38 | 4,136,255 | 657,720 | 4,793,975 |
| Ministry of Communications - Real and Tangible Property, Contract Losses, Payment or Relief to Others | Ministry of Communications | 5000173 | 45 | 229,638,928 | 36,710,520 | 266,349,448 |
| Public Authority for Applied Education and Training | | 5000175 | 46 | 120,776,864 | 19,193,360 | 139,970,224 |
| Public Authority for Agriculture Affairs and Fish Resources | | 5000187 | 55 | 46,921,883 | 7,456,480 | 54,378,363 |

| Claimant | Short name of claimant (if different) | UNCC claim number | Government claim number | Principal claim amount (US$) a/ | Interest (US$) | Amount claimed including interest (US$) |
|---|---|---|---|---|---|---|
| Ministry of Interior - Buildings, Coast Guard, Communications Equipment, Criminal Evidence Equipment, Computer Equipment, Traffic Department, Office Furniture and Equipment, Warehouses, Currency, and Emergency Offices | Ministry of Interior | 5000189 | 57 | 154,518,335 | 24,556,040 | 179,074,375 |
| Directorate General of Civil Aviation - Terminal 1, Communications Center and Other Buildings, Communications Equipment and Meteorological Equipment | Directorate General of Civil Aviation | 5000191 | 59 | 101,946,774 | 16,201,720 | 118,148,494 |
| Total | | | | 4,572,908,523 | 726,928,049 | 5,299,836,572 |

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a/ The figures in this column are the starting point of the Panel's review, before any of the adjustments described in this report. They do not include any claims preparation costs. PAAC has filed a separate claim for such costs (UNCC Claim No. 5000193).

5. Having regard to the complexity of the issues raised, the volume of documentation, and the amount of compensation sought, the Panel has classified all the second instalment claims as "unusually large or complex" within the meaning of article 38(d) of the Rules, thereby requiring the Panel to complete its review of these claims within a period of 12 months.

6. Given the nature of the second instalment claims, the Panel determined that due process would require the provision to Iraq of copies of all of the claim files submitted by claimants. These were forwarded to Iraq pursuant to Procedural Order 1 issued in respect of each claim on 14 September 1999. Iraq submitted a response to each of the second instalment claims except for that of the Directorate General of Civil Aviation.

## II. PROCEDURAL HISTORY

7. In undertaking its review of the second instalment claims, the Panel has followed the procedures and applied the principles and decisions set out in sections II, III, IV and V of the First "F3" Report (found at paragraphs 6 to 125 (inclusive) of that report). For the ease of reference of the reader, those sections are repeated as the annex to this Report, and the paragraph numbers follow those of the First "F3" Report.

## III. CONSIDERATION OF COMMON LEGAL ISSUES

8. In section IV of the First "F3" Report (repeated as section IV of the annex), the Panel considered issues that arose more than once in the first instalment claims. The second instalment claims raise certain further such issues and the Panel now turns to such common legal issues.

### A. Property losses - including losses of military assets, those caused by Allied Coalition Forces' 3/ bombing and those resulting from the breakdown of civil order

9. At paragraphs 29 and 30 of the First "F3" Report (repeated as paragraphs 29 and 30 of the annex, respectively), the Panel found that the evidence submitted in support of the property losses in the first instalment claims was sufficient to demonstrate that the losses were "direct losses" and hence compensable, subject to verification and valuation. The Panel finds that the evidence submitted in support of the property losses in the second instalment claims is also sufficient to demonstrate that the losses were "direct losses".

10. Iraq's responses to Procedural Order 1 frequently assert that it should not be held responsible for property losses caused by:

(a) the bombing of Kuwait carried out by the Allied Coalition Forces during Iraq's invasion and occupation of Kuwait; or

(b) the breakdown of civil order due to the absence of legal authority following Iraq's withdrawal from Kuwait.

11. The Panel notes that paragraph 34(a) of Governing Council decision 7 provides that Iraq is responsible for "any loss suffered as a result of [m]ilitary operations ... by either side during the period 2 August 1990 to 2 March 1991". 4/ The Panel finds that the Governing Council in decision 7 has determined that losses arising out of the bombing of Kuwait by the Allied Coalition Forces during the period cited are "direct losses".

12. In relation to property losses caused by the breakdown of civil order due to the absence of legal authority following Iraq's withdrawal from Kuwait, the Panel notes that paragraph 34(d) of Governing Council decision 7 provides that Iraq is responsible for "any loss suffered as a result of ... [t]he breakdown of civil order in Kuwait or Iraq during" the period 2 August 1990 to 2 March 1991. The Panel finds that the Governing Council in its decision has determined that losses arising out of the breakdown of civil order in Kuwait or Iraq during the period cited are "direct losses".

13. Some of the second instalment claims seek compensation for the loss of, or damage to, the Government of Kuwait's military facilities and assets ("military assets"). 5/ Prima facie, such losses of property are compensable for the reasons set out in the preceding paragraphs.

14. However, Governing Council decision 19 6/ provides that "[t]he Governing Council confirms that the costs of the Allied Coalition Forces, including those of military operations against Iraq, are not eligible for compensation". In light of this, the Panel now turns to consider whether the second instalment claims that seek compensation for the loss of, or damage to, military assets are compensable.

15. The Panel finds that the costs to the Government of its preparation for, participation in, or provision of support in relation to, the activities of the Allied Coalition Forces and their military response to Iraq's invasion and occupation of Kuwait fall within Governing Council decision 19 and are accordingly not compensable. Having considered the nature and circumstances of the loss and damage to the Government of Kuwait's military assets referred to at paragraph 13 above, the Panel finds that such losses do not fall within the exclusion contemplated in Governing Council decision 19 and are accordingly compensable. An exception to this finding is discussed at paragraphs 265 to 268 below.

16. In light of the above, the Panel finds that the property losses claimed in the second instalment claims (including those in relation to military assets) are "direct losses" and hence compensable (an exception to this

finding is discussed at paragraphs 265 to 268 below), subject to verification and valuation. 7/

## B. Accounting for depreciation in claims for property loss

17.The Government has presented a number of claims seeking compensation for loss or destruction of, or damage to, real and tangible property. As noted at paragraph 16 above, the Panel finds that such claims are, in principle, compensable.

18.Such claims are usually made for the cost of:

(a) replacement, in the case of lost tangible property;

(b) reconstruction, in the case of destroyed real property; or

(c) repair, in the case of damaged property, whether real or tangible.

19.The Panel notes that claimants usually applied deductions for depreciation only in the first two cases mentioned at paragraph 18 above (to reflect the longer useful life of the new property compared with that lost or destroyed). Claims made for the costs of repairs generally make no equivalent adjustment for depreciation, because the Government asserts that repairs do not generally extend the useful life of the property repaired. The Panel finds, however, that there are cases of repairs that have extended the useful life of the property (or part thereof) repaired and has made adjustments for inadequate accounting for depreciation in such cases.

## C. Buildings not repaired or rebuilt

20.The Government has presented a number of claims seeking compensation for destroyed or damaged buildings, for which the claimant has not yet commenced the necessary reconstruction or repair. 8/

21.The Panel, applying the principles set out at paragraphs 65 and 66 of the First "F3" Report (repeated as paragraphs 65 and 66 of the annex, respectively), finds that Iraq is liable for the loss of or damage caused to the buildings as a direct result of Iraq's invasion and occupation of Kuwait, even if the claimant has not rebuilt the building or repaired the damage so caused. Accordingly, the loss of or damage to such buildings is compensable, subject to verification and valuation, and the Panel has recommended as compensation the cost of reconstruction or repair measured at such time as it would be reasonable, in all the circumstances, to expect the reconstruction or repair to have taken place.

22. In appropriate cases, the Panel has made adjustments for inadequate accounting for depreciation and saved expenses. The latter adjustment is calculated as the maintenance and other expenses that were not incurred from the time of Iraq's invasion and occupation of Kuwait until such time as it would be reasonable, in all the circumstances, to expect the reconstruction or repair to have taken place.

## D. Loss of research and information

23. The Government has presented a number of claims seeking compensation for the loss of research and information contained in records 9/ that were themselves lost as a direct result of Iraq's invasion and occupation of Kuwait ("lost information").

24. At paragraphs 474 to 476 of the First "F3" Report, the Panel recognised that there are two aspects to a claim for lost information - "the loss of materials such as paper and folders and ... the loss of ... the information contained [therein]". The Panel has verified and valued the loss of the materials in the manner described at paragraphs 109 to 115 of the First "F3" Report (repeated as paragraphs 109 to 115 of the annex) and now turns to the valuation of the information contained in those materials.

25. In most cases, the claimants seek the replacement cost of the lost information, itself measured as the costs of the initial creation of the information or the costs of re-creating the information after liberation. In each case, the loss was based on the historic labour and materials costs, save in a few instances in which post-liberation labour and materials costs were used. Adjustments were sometimes made to reflect the obsolescence of the lost information at the time of its loss and to account for inflation between the creation of the lost information and the date of loss.

26. The Panel notes that information is usually valued by reference to its market value - that is, a sale price or ascertainable future income stream. However, in most of the cases before it, the information does not have an ascertainable market value nor can it be replaced by purchase. Accordingly, the Panel finds that it is appropriate to value such losses of information by reference to labour and materials costs.

27. In each case, the Panel has considered whether adjustments to the amounts claimed should be made for obsolescence, inadequate accounting for depreciation and for the use that would have been made of the information if it had not been lost. Such adjustments are set out, in the standard manner, in the consideration of each of the second instalment claims below.

28.The Panel has also considered the extent to which the information lost can be recovered (such as from publications, patents and institutional knowledge), and any technological advancements, that allow the information lost to be re-created at a cost lower than that incurred for its initial creation. The Panel has used the shorthand expression "economies of re-creation", as further set out at paragraph 47 below, to denote adjustments made for such matters.

## E. Work undertaken in the immediate post-liberation period

29.A number of second instalment claimants undertook repairs and procured items in the immediate post-liberation period when the prices of goods and services in Kuwait were, in general, higher than the norm. In accordance with the duty of mitigation, these repairs and procurements must be shown to have been carried out at a cost that was, in all the circumstances, the lowest reasonable cost. 10/

30.At paragraph 138 of the First "F3" Report, in discussing the claim of the Ministry of Finance in relation to the Kuwait Emergency Reconstruction Office ("KERO"), 11/ the Panel found that compensation would be recommended for the additional cost incurred by entering into a contract without recourse to competitive procurement procedures only if the contract was of such urgency that resort to competitive procurement procedures could not reasonably be required in the circumstances.

31.The Panel finds that the principles giving rise to that test should be applied to the repairs and procurements discussed in paragraph 29 above. That is, compensation should be recommended for the additional cost incurred by undertaking repairs or procuring items when prices of goods and services were, in general, higher than the norm to the extent that the repairs or procurements were of such urgency that the claimant could not reasonably be required to wait until prices had returned to normal patterns to undertake such repairs or procurements.

## F. Use of existing materials and labour for repair and reconstruction

32.Two second instalment claimants 12/ seek compensation for:

(a) the replacement cost of materials located in storage at the time of liberation and used in the repair of equipment or facilities damaged as a direct result of Iraq's invasion and occupation of Kuwait; 13/ and

(b) the salaries paid to existing employees referable to the time spent by them on repairing damage that was a direct result of Iraq's invasion and occupation of Kuwait or in restoring operations disrupted as a direct result of Iraq's invasion and occupation of Kuwait. 14/

33.The Panel recommends that compensation be awarded for the materials and that the loss be valued by reference to their replacement cost.

34.The Panel finds that compensation should also be awarded in relation to the labour of the existing employees. The loss should be measured by reference to the value of the work that would have been performed by the employees had they been undertaking their normal duties instead of working on repair or restoring operations. The Panel has considered the valuation of each such loss in the context of the activities of the claimant concerned, the work normally performed by the employees, whether or not the claimant operated as a commercial entity, and whether or not the claimant has a loss of revenue claim or a loss of profits claim for all or part of the period covered by the claim for salaries. 15/

## G. Contract interruption losses

35.There are a number of second instalment claims for contract interruption losses seeking compensation for losses sustained due to the interruption of contracts that were in existence on 2 August 1990. Such losses include the costs of site restoration and the additional costs of completing the contracts. 16/

36.The Panel, continuing its approach set out at paragraph 63 of the First "F3" Report (repeated as paragraph 63 of the annex), finds that the losses claimed are compensable in so far as they are attributable to the factors set out in that paragraph, namely, site restoration costs, additional transportation costs and additional insurance costs. In a number of claims, the site restoration costs include an amount for lost contractor's materials on site. Such materials had been delivered to the project site as at the date of Iraq's invasion and occupation of Kuwait, but had not yet been incorporated into the project concerned. The Panel, having considered the terms of the relevant contracts, finds that the Government was liable for such losses, and accordingly has recommended compensation for lost contractor's materials on site (subject to verification and valuation). 17/

37.In those cases in which the claimant has now entered into a post-liberation contract or intends to do so in the future, the Panel has valued the loss in accordance with the findings at paragraphs 63 and 64 of the First "F3" Report. 18/

38.In those cases in which the claimant has not entered into a post-liberation contract and does not demonstrate an intention to do so in the future, the Panel finds that the projects have been abandoned. In such cases, the Panel has considered the reasons why the projects were abandoned. The Panel has concluded that none of the projects under consideration was abandoned as a direct result of Iraq's invasion and occupation of Kuwait.

39.The Panel has, however, applied the principles set out at paragraphs 65 and 66 of the First "F3" Report to such abandoned projects and finds that Iraq is liable for any damage caused to the project site as a direct result of its invasion and occupation of Kuwait, even if the claimant has decided not to repair the damage and resume the project. The Panel has valued the loss as the cost of repairing the damage measured at such time as it would be reasonable, in all the circumstances, to expect the repair to have taken place (with adjustments, in appropriate cases, for inadequate accounting for depreciation and saved expenses). 19/ The Panel finds that any other losses to Kuwait arise out of its independent decisions to abandon the projects concerned.

## H. Uncollectible receivables

40.One claimant 20/ seeks compensation for uncollectible receivables, being sums owed to it at the time of Iraq's invasion and occupation of Kuwait that have not been repaid. These sums are owed by individuals, companies, businesses and Government departments and usually arose following the provision of services to those entities. 21/

41.The Panel recommends that no compensation be awarded in relation to sums owed:

(a) by Government departments, because there is no loss to the Government as a whole (the loss to the claimant is a saving for the debtor); 22/

(b) that would have been written off as irrecoverable under international accounting practice prior to Iraq's invasion and occupation of Kuwait; and

(c) in respect of work carried out, but lost or destroyed as a direct result of Iraq's invasion and occupation of Kuwait, the loss of which is claimed elsewhere. 23/

42.For the remaining uncollectible receivables, the Panel has recommended compensation only if the claimant has demonstrated that the receivable is uncollectible and that the debtor's inability to pay is a direct result of Iraq's invasion and occupation of Kuwait.

# IV. THE SECOND INSTALMENT CLAIMS

## A. Introduction

43. The Panel now turns to consider separately each of the second instalment claims. In this section the Panel sets out its consideration of the asserted losses and presents its recommendations for compensation in respect of them.

44. The Panel notes that a number of items of tangible property have been returned by Iraq to the Government pursuant to the United Nations Return of Property programme ("UNROP"). In a number of claims, the claimant has adjusted the amount claimed to account for the items returned. In making its recommendations, the Panel has considered the extent of any damage to such items, the value of such items and, if required, the cost to repair them, and has made further adjustment to the amounts claimed where necessary. The Panel's recommendations therefore account for the condition, value and repair costs (if any) of the items returned by Iraq to the Government pursuant to UNROP.

45. Some of the second instalment claims seek compensation for relief paid to Kuwaiti and/or GCC employees of the Government. The compensability of such claims is discussed at paragraphs 31 to 48 of the First "F3" Report (repeated as paragraphs 31 to 48 of the annex). The Panel noted, at paragraph 41 thereof, that the Government operates a social security system which confers pensions and similar benefits on employees, and which is funded by contributions from employers and employees (the "Social Security Fund"). Each employee contributes five per cent of his or her gross salary, which is deducted at source from the salary paid. The Panel has examined the evidence submitted and, where necessary, has requested the Government to confirm whether the amounts paid to the employees and claimed as relief paid to employees in the second instalment claims took into account the employees' contributions. In cases in which the Panel is not satisfied that the social security contributions have been adequately accounted for, the Panel has made suitable adjustments to the amounts claimed. Such adjustments are set out in the consideration of the individual claims below.

46. The Panel notes that, during its occupation of Kuwait, Iraq requested employees to exercise their normal functions and that certain employees did work during the occupation period. Iraq has asserted, in its response to Procedural Order 1 in respect of certain claims, that it paid employees for such work from its own resources. In calculating the 60 per cent deduction from all claims for relief paid to employees, that is discussed at paragraph 48 of the First "F3" Report, the Panel made allowance for a certain level of payments made by Iraq for work carried out during the

occupation period. The Panel finds that the payments that Iraq asserts were made fall within such allowance.

47.In reporting on the verification and valuation of the first instalment claims, the Panel noted at paragraph 125 of the First "F3" Report that it sometimes uses one or more shorthand expressions to explain in any given case why a claim or part thereof has been reduced or rejected. In reporting on the verification and valuation of the second instalment claims, the Panel has continued to use those shorthand expressions and has found it necessary to add two further such expressions, as follows:

(a) "incorrect valuation of KERP assets" means that the amount claimed has been reduced because the assessment of residual value applied by the claimant to assets received pursuant to the Kuwait Emergency and Recovery Program 24/ is incorrect; and

(b) "economies of re-creation" means that the amount claimed in respect of information losses has been reduced so as to account for information that can be recovered (such as from publications, patents and institutional knowledge), and technological advancements, that allow the information lost to be re-created at a cost lower than that incurred for its initial creation.

48.The Panel has considered, and made where appropriate, all adjustments that it considers necessary to the amounts claimed for one or more of the reasons set out in paragraph 125 of the First "F3" Report and in paragraph 47 above. However, in reporting on the verification and valuation of the second instalment claims, the Panel has reported only those adjustments that fall above a de minimis level, which the Panel has established as one per cent of the total adjustments made by the Panel (for each claim or part thereof).

49.The Panel has made adjustments for "saved expenses", being one of the shorthand expressions set out in paragraph 125 of the First "F3" Report, and notes that such adjustments arise most commonly in relation to revenue and property losses, in which cases the expenses saved usually comprise operating expenses and (in the case of property losses) maintenance expenses. The period in respect of which expenses were saved extends for the period of loss (in the case of revenue losses or claims for extraordinary costs incurred) or from the date of loss until the date of repair, reinstatement or renewal (in the case of property or contract losses), save as otherwise noted.

50.The Panel has continued to apply the level of materiality set out at paragraph 121 of the First "F3" Report. In reporting on the verification and valuation of the second instalment claims, the Panel has confirmed, in some cases by way of note to the relevant claim or part thereof, whether some or all parts of the claims fall below the level of materiality adopted by the Panel. The treatment o such non-material items is set out at paragraphs 120 to 123 of the First "F3" Report.

51. The Panel has reviewed the second instalment claims using amounts rounded to the nearest US$1,000. Therefore, all recommended compensation amounts are presented in multiples of US$1,000, except where the Panel recommends payment in full of any claim or part thereof.

## B. Ministry of Finance - Kuwait Emergency and Recovery Program

### Government Claim No. 1, UNCC Claim No. 5000018

Table 2. Summary Table for Ministry of Finance - Kuwait Emergency and Recovery Program

| Loss type/Loss element | | Amount claimed US$ | Amount recommended US$ | Paragraph references |
|---|---|---|---|---|
| Public services expenditure | | | | |
| a) | Medical supplies | 34,318,517 | 34,318,517 | 61-63 |
| b) | Food and water | 84,885,652 | 81,321,000 | 64-68 |
| c) | Fire fighting equipment | 24,382,887 | 23,851,000 | 69-71 |
| d) | Bomb disposal equipment | 15,361,130 | 11,060,000 | 72-75 |
| e) | Clearing of roads, unsafe buildings and rubble | 13,097,823 | 7,767,000 | 76-79 |
| f) | Electrical equipment and natural gas | 82,577,853 | 49,116,000 | 80-85 |
| g) | Communications equipment | 77,837,166 | 57,835,000 | 86-90 |
| h) | Transportation vehicles | 30,626,227 | 14,552,000 | 91-95 |
| i) | Emergency border control | 51,920,662 | 50,769,000 | 96-99 |
| j) | Emergency equipment to re-open airport | 8,901,600 | 2,715,000 | 100-104 |
| k) | Law enforcement for peacekeeping and restoring security | 49,175,285 | 40,094,000 | 105-110 |
| l) | Emergency sanitation equipment | 1,167,879 | 486,000 | 111-114 |
| m) | Shipping expenditure | 43,633,542 | 43,633,542 | 115-117 |
| n) | KERP office expenses | 15,585,897 | 14,791,000 | 118-122 |
| Total | | 533,472,120 | 432,309,059 | |
| Interest | | 84,770,912 | | |

### 1. Public service expenditures - US$533,472,120

#### (a) Introduction

52. This claim is made for the costs incurred by the Government in relation to the Kuwait Emergency and Recovery Program ("KERP"), a procurement programme set up in December 1990 and managed by the Council of Ministers. KERP was initially operated from an office in Washington, D.C., United States of America and later moved to Dammam, Saudi Arabia. The purpose of KERP was to procure supplies of medicine, food, water, fire-fighting equipment, bomb disposal equipment, transportation vehicles and other goods and related services that the Government anticipated would be required following the liberation of Kuwait. The repair of some damaged facilities was also undertaken pursuant to KERP. The contracts for the vast majority of KERP's procurements of goods and services were entered into before

liberation. The remainder was entered into during the emergency period or shortly thereafter.

53.Before liberation, the Government was not able to identify its precise post-liberation needs. It therefore anticipated those needs based on discussions with those agencies of the Government that were to receive the goods and services (the "Receiving Agencies") and also based on a number of assumptions about the closing stages of military operations against Iraq and the post-liberation situation in Kuwait. 25/

54.The Government asserts that KERP's procurements either:

(a) were consumed during the emergency period (for example, food) or otherwise retained no value thereafter. The Panel will refer to such goods as "Consumed Goods";

(b) retained a value beyond the emergency period and were transferred to Receiving Agencies which had lost assets of a similar nature as a direct result of Iraq's invasion and occupation of Kuwait (for example, medical supplies not consumed during the emergency period were transferred to the Ministry of Health). The Panel will refer to such goods as "Transferred Goods"; or

(c) were purchases that the Government would not ordinarily have made but which were necessitated by Iraq's invasion and occupation of Kuwait (for example, the border control system discussed at paragraph 97 below). The Panel will refer to such purchases as "Exceptional Purchases".

55.The claim is presented by reference to fourteen categories of purchase, each of which the Panel considers separately, commencing at paragraph 61 below.

56.The Panel finds that the Government acted reasonably in entering into procurement contracts, in advance of liberation, based on its anticipated needs, and that the assumptions made and the assessment of Kuwait's needs were reasonable in the circumstances. The Panel also finds that the Government's purchases were in accordance with its assumptions and that the purchases of all the items comprising Exceptional Purchases were required as a direct result of Iraq's invasion and occupation of Kuwait. The Panel finds, therefore, that the amounts claimed are compensable, subject to verification and valuation.

57. In light of the allocation of the purchases into Consumed Goods, Transferred Goods and Exceptional Purchases, the Panel has approached the verification and valuation of each of the fourteen categories of claim applying the principles set out in section V of the First "F3" Report (repeated as section V of the annex) and by asking:

(a) whether the Consumed Goods were in fact consumed and, if so, whether it was reasonable for them to be so consumed. If the Consumed Goods were not in fact consumed, the Panel has sought to ascertain the value (if any) they retained at the end of the emergency period; 26/

(b) whether the Transferred Goods are accounted for in the claims of the Receiving Agencies 27/ including the extent to which they replaced goods lost by the Receiving Agencies as a direct result of Iraq's invasion and occupation of Kuwait;

(c) whether the assertion that the Transferred Goods replaced goods of a similar nature lost by the Receiving Agencies as a direct result of Iraq's invasion and occupation of Kuwait is sufficiently supported by the evidence presented; 28/ and

(d) whether the items constituting the Exceptional Purchases retained any value at the end of the emergency period and, if so, what account is to be taken of such value.

58. In each case where a Receiving Agency has accounted for the Transferred Goods in its claim, the Panel has considered whether the claim of the Receiving Agency reflects the correct residual value of the Transferred Goods. If not, the Panel has made an adjustment for "incorrect valuation of KERP assets" in the Receiving Agency's claim. 29/

59. Where the Receiving Agency has not accounted for the Transferred Goods in its claim, the Panel has sometimes found it necessary to make adjustments for enhancement, inadequate accounting for depreciation, inadequate accounting for residual value, saved expenses and overstatement in the present claim. The Panel has calculated these adjustments by reference to its estimate of the age and type of goods that the Transferred Goods replaced. The Panel has also found it necessary in such cases to make adjustments for insufficient evidence in the present claim to reflect a lack of support for the assertions that the Transferred Goods replaced goods of a similar nature lost as a direct result of Iraq's invasion and occupation of Kuwait. The Panel has set out its findings in this regard in its discussion of the fourteen claim categories commencing at paragraph 61 below.

60.The Panel has considered the method adopted for the selection of contractors and sub-contractors to provide the goods and services. In accordance with the duty of mitigation, the Government must show that the KERP procurements and works were carried out at the lowest reasonable cost in all the circumstances. The Panel finds that the contractors and sub-contractors were chosen using competitive procurement procedures, including the selection of the lowest acceptable bid, and therefore that the method adopted, and prices paid, were reasonable. 30/

### (b) Medical supplies - US$34,318,517

61.The Government procured medical supplies and equipment such as pharmaceuticals, ambulances, blood banks, dental surgery equipment and diagnostic imaging equipment.

62.The Panel finds that some of the items purchased were Consumed Goods and recommends that compensation in full be awarded for such items. The remaining purchases were Transferred Goods that were accounted for in the claim of the Ministry of Health.

63.In light of the above, the Panel recommends payment in full in the amount of US$34,318,517.

### (c) Food and water - US$84,885,652

64.The Government procured food and water supplies such as bottled water, water delivery trucks, an emergency water treatment facility, potable water storage tanks, reverse osmosis units, office equipment to support the distribution of water, and food rations. It also contracted for the design and implementation of an emergency water treatment facility.

65.The Panel finds that the majority of the items purchased were Consumed Goods and recommends that compensation in full be awarded for such items.

66.Some of the items purchased were Transferred Goods that were accounted for in the Receiving Agencies' claims.

67.The potable water storage tanks, reverse osmosis units, office equipment to support the distribution of water, and the contract for the design and implementation of an emergency water treatment facility were Exceptional Purchases. The Panel finds that an adjustment should be made for inadequate accounting for residual value in relation to the reverse osmosis units and the office equipment.

68.In light of the above, the Panel recommends compensation in the amount of $81,321,000 out of the US$84,885,652 claimed.

### (d) Fire-fighting equipment - US$24,382,887

69.The Government procured fire-fighting equipment such as trucks, hoses and suits.

70.All of the purchases were Transferred Goods. While the vast majority of the purchases were accounted for in the Receiving Agencies' claims, some were not. The Panel has therefore made adjustments in the present claim for inadequate accounting for depreciation, saved expenses and insufficient evidence.

71.In light of the above, the Panel recommends compensation in the amount of US$23,851,000 out of the US$24,382,887 claimed.

### (e) Bomb disposal equipment - US$15,361,130

72.The Government procured bomb disposal equipment such as metal detectors, protective clothing and vehicles equipped to withstand bomb blasts.

73.The Panel finds that some of the items purchased were Consumed Goods and recommends that compensation in full be awarded for such items.

74.The remaining purchases were Transferred Goods, not all of which were accounted for in the Receiving Agencies' claims. The Panel has therefore made adjustments in the present claim for inadequate accounting for depreciation, saved expenses and insufficient evidence.

75.In light of the above, the Panel recommends compensation in the amount of US$11,060,000 out of the US$15,361,130 claimed.

### (f) Procurements for emergency clearing of roads, unsafe buildings and rubble - US$13,097,823

76.The Government procured heavy equipment such as trucks, tractors, graders and compactors, and also undertook some building repairs.

77.The Panel finds that the purchases were Transferred Goods, not all of which were accounted for in the Receiving Agencies' claims. The Panel has therefore made adjustments in the present claim for inadequate accounting for depreciation, saved expenses and insufficient evidence.

78.In relation to the building repairs, the Panel finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

79.In light of the above, the Panel recommends compensation in the amount of US$7,767,000 out of the US$13,097,823 claimed.

### (g) Electrical equipment and natural gas - US$82,577,853

80.The Government procured items for the generation of electricity such as equipment for power stations, 245 emergency power generators and 16 mobile floodlight towers. It also undertook some repairs to the electricity network (including to transmission lines) and procured an emergency supply of natural gas.

81.The Panel finds that some of the items purchased were Consumed Goods and recommends that compensation in full be awarded for such items.

82.The Panel finds that some of the remaining purchases were Transferred Goods, not all of which were accounted for in the Receiving Agencies' claims. The Panel has therefore made adjustments in the present claim for inadequate accounting for depreciation, saved expenses and insufficient evidence.

83.The 245 emergency power generators and the 16 mobile floodlight towers were Exceptional Purchases. The Panel finds that an adjustment should be made for inadequate accounting for residual value in relation to them.

84.In relation to the repairs to the electricity network (including transmission lines), the Panel finds that adjustments should be made for depreciation, saved expenses and insufficient evidence.

85.In light of the above, the Panel recommends compensation in the amount of US$49,116,000 out of the US$82,577,853 claimed.

### (h) Communications equipment - US$77,837,166

86.The Government procured communications equipment such as transportable satellite communications equipment, generators and radios.

87.The Panel finds that some of the items purchased were Consumed Goods and recommends that compensation in full be awarded for such items.

88.The Panel finds that the majority of the remaining purchases were of Transferred Goods, not all of which were accounted for in the Receiving Agencies' claims. The Panel has therefore made adjustments in the present claim for inadequate accounting for depreciation, saved expenses and insufficient evidence.

89. The Panel finds that some of the amounts claimed, which relate to the installation and servicing of emergency communications facilities, comprised Exceptional Purchases and recommends that compensation in full be awarded for such purchases.

90. In light of the above, the Panel recommends compensation in the amount of US$57,835,000 out of the US$77,837,166 claimed.

### (i) Transportation vehicles - US$30,626,227

91. The Government procured a variety of transportation vehicles, spare parts and tools, and traffic equipment such as barriers and signs.

92. The Panel notes that of the vehicles purchased, 85 are not accounted for in either the present claim or in a Receiving Agency claim, in that the Government has not submitted any evidence as to their use during the emergency period nor thereafter. The Government asserts that the vehicles were involved in traffic accidents but has provided no evidence to support that assertion. As a result, the Panel does not recommend any compensation for the amount claimed for the 85 vehicles.

93. In its response to Procedural Order 45 issued in March 2000, the Government stated that the Kuwait Public Transport Co. was the Receiving Agency for 285 of the vehicles and a quantity of spare parts and the Kuwait Ports Authority was the Receiving Agency for 17 of the vehicles. That portion of the claim referable to these 302 vehicles and the spare parts has therefore been severed and transferred to the "E4" Panel of Commissioners, which is considering the claims of these two Receiving Agencies. 31/

94. The Panel finds that the remaining purchases were Transferred Goods, not all of which were accounted for in the Receiving Agencies' claims. The Panel has therefore made adjustments in the present claim for inadequate accounting for depreciation, saved expenses and insufficient evidence.

95. In light of the above, the Panel recommends compensation in the amount of US$14,552,000 out of the US$30,626,227 claimed.

### (j) Emergency border control system - US$51,920,662

96. The Government procured border control equipment such as hardware, software and photographic equipment. It also procured the services of consultants to design and implement border control systems.

97. Over US$37 million of the amount claimed relates to the development, installation and operation of a new border control system which allowed the Government to ascertain whether those in Kuwait and those seeking to enter Kuwait after liberation were entitled to live in Kuwait. It also provided a single form of identification. The Panel recommends that compensation in full be awarded in respect of this Exceptional Purchase.

98. The Panel finds that the remaining purchases were Transferred Goods, not all of which were accounted for in the Receiving Agencies' claims. The Panel has therefore made adjustments in the present claim for enhancement, inadequate accounting for depreciation, saved expenses and insufficient evidence.

99. In light of the above, the Panel recommends compensation in the amount of US$50,769,000 out of the US$51,920,662 claimed.

### (k) Emergency equipment to re-open the Kuwait Airport - US$8,901,600

100. The Government procured emergency equipment to re-open the Kuwait Airport such as X-ray inspection equipment and a radar station. It also undertook emergency repairs to some of the Kuwait Airport facilities.

101. The Panel finds that some of the items purchased were Consumed Goods and recommends that compensation in full be awarded for such items.

102. The Panel finds that the majority of the remaining purchases were Transferred Goods, none of which were accounted for in the Receiving Agencies' claims. The Panel has therefore made adjustments in the present claim for enhancement, inadequate accounting for depreciation, saved expenses and insufficient evidence.

103. In relation to the repairs to some of the Kuwait Airport facilities, the Panel finds that adjustments should be made for insufficient evidence.

104. In light of the above, the Panel recommends compensation in the amount of US$2,715,000 out of the US$8,901,600 claimed.

### (l) Law enforcement equipment for peace-keeping and restoring security - US$49,175,285

105. The Government procured law enforcement equipment such as guns, ammunition, uniforms, boats and vehicles. It also undertook some emergency repairs to police stations and a prison.

106. The claim presented in respect of one of these procurement contracts exceeds the relevant contract price. In its response to Procedural Order 36 issued in January 2000, the Government stated that it did not have evidence to support this excess and the Panel has made the appropriate adjustment. In its response to Procedural Order 46 issued in May 2000, the Government stated that the amount claimed for the boats was, in fact, duplicated by the claim of the Ministry of Interior considered at paragraphs 711 to 715 below. The Panel has therefore excluded the amount claimed in respect of the boats.

107. The Panel finds that the vast majority of the purchases were Transferred Goods, not all of which were accounted for in the Receiving Agencies' claims. The Panel has therefore made adjustments in the present claim for enhancement, inadequate accounting for depreciation, saved expenses and insufficient evidence.

108. In relation to the repairs to the police station and prison, the Panel finds that adjustments should be made for inadequate accounting for depreciation and insufficient evidence.

109. The Panel finds that some of the amounts claimed, which relate to the provision of temporary accommodation, were Exceptional Purchases and recommends that compensation in full be awarded for such purchases.

110. In light of the above, the Panel recommends compensation in the amount of US$40,094,000 out of the US$49,175,285 claimed.

### (m) Emergency sanitation equipment - US$1,167,879

111. The Government procured emergency sanitation equipment such as furniture, office equipment and cleaning agents.

112. The Panel finds that the cleaning agents were Consumed Goods and recommends that compensation in full be awarded for such items.

113. The Panel finds that the remaining purchases were Transferred Goods, none of which were accounted for in the Receiving Agency's claim. The Panel has therefore made adjustments in the present claim for inadequate accounting for depreciation and insufficient evidence.

114. In light of the above, the Panel recommends compensation in the amount of US$486,000 out of the US$1,167,879 claimed.

### (n) Shipping expenditures for the emergency equipment - US$43,633,542

115. The Government claims the costs incurred in transporting the items procured to Kuwait.

116. The Government contracted with one contractor to undertake the logistical co-ordination of the Government's transportation requirements. The contractor then chose sub-contractors to undertake the transportation itself. As set out at paragraph 60 above, the Panel finds that the selection of the contractor and its selection of sub-contractors was undertaken using competitive procurement procedures with the selection of the lowest acceptable bid 32/ and therefore that the method adopted, and prices paid, were reasonable.

117. In light of the above, the Panel recommends payment in full in the amount of US$43,633,542.

### (o) KERP office support and logistics - US$15,585,897

118. The Government seeks compensation for office and other costs incurred to administer KERP such as rent, salaries, legal and accounting costs, and the costs of administering and organising payment for the KERP procurements.

119. The Panel finds that the decision to operate the offices in Washington, D.C. and Dammam was reasonable in the circumstances and, applying the principles set out at paragraph 79 of the First "F3" Report, that the reasonable cost of operating the offices is compensable.

120. In addition, the Panel finds that the reasonable legal and accounting costs and costs of administering and organising payments are compensable, as such services were an integral part of the KERP procurements.

121. The Government also claims the cost of three buses that were used by high-ranking officials of the Government during the emergency period. They were fitted with conference, communications and command-control facilities, which enabled the officials to move around Kuwait and inspect damage and direct the recovery, while allowing contact to be maintained with the military, civil servants, diplomats and other Governments. In its response to Procedural Order 46 issued in May 2000, the Government asserted that the buses replaced buses of a similar value lost by the Government as a direct result of Iraq's invasion and occupation of Kuwait. The Panel finds that the Government's assertion is insufficiently supported by the evidence

presented and that the buses are not accounted for in any other claim. The Panel has therefore made adjustments in the present claim for inadequate accounting for depreciation, saved expenses and insufficient evidence.

122. In light of the above, the Panel recommends compensation in the amount of US$14,791,000 out of the US$15,585,897 claimed.

## C. Kuwait Institute for Scientific Research

### Government Claim No. 3, UNCC Claim No. 5000039

Table 3. Summary Table for Kuwait Institute for Scientific Research

| Loss type/Loss element | Amount claimed US$ | Amount recommended US$ | Paragraph references |
|---|---|---|---|
| Real property | 11,124,538 | 8,658,000 | 123-128 |
| Other tangible property | | | |
| a) Equipment | 43,964,017 | 15,667,000 | 129-133 |
| b) Doha Reverse Osmosis Plant | 25,078,873 | 7,663,000 | 134-136 |
| c) NSTIC library collection | 9,175,889 | 3,333,000 | 137-140 |
| d) Products of research and development | 195,417,000 | 54,967,000 | 141-147 |
| e) Unique scientific items | 7,116,500 | 0 | 148-149 |
| f) Staff housing furniture | 807,508 | 283,000 | 150 |
| Sub-total | 281,559,787 | 81,913,000 | |
| Contract | | | |
| a) Loss under the contract with Burgan Contracting Co | 1,254,699 | 0 | 151-155 |
| b) Loss under other contracts | 1,511,250 | 0 | 156-164 |
| Sub-total | 2,765,949 | 0 | |
| Business transaction or course of dealing | | | |
| a) Lost contract income (post-invasion) | 32,462,485 | 0 | 165-169 |
| Other losses | | | |
| a) Costs of rebuilding KISR organization | 36,695,525 | a/ | 170-176 |
| b) Additional training costs due to loss of experienced personnel | 9,746,894 | a/ | 170-176 |
| c) Additional business development costs | 3,344,519 | a/ | 170-176 |
| d) Cost of additional computer training | 339,825 | a/ | 170-176 |
| e) Cost of restoration of administrative software | 1,532,281 | a/ | 170-176 |
| Sub-total | 51,659,044 | 9,900,000 | |
| Payment or relief to others | 10,771,889 | 4,228,000 | 177-184 |
| Total | 390,343,692 | 104,699,000 | |
| Interest | 62,027,217 | | |

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a/ Loss elements subsumed into the method of valuation adopted by the Panel. Breakdown of amount recommended by loss element not possible.

### 1. Real property - US$11,124,538

123. The Kuwait Institute for Scientific Research ("KISR") conducts scientific research in the fields of agriculture, fisheries, water resources, petroleum and other energy technology, and environmental science and economics. KISR claims that during Iraq's invasion and occupation of Kuwait, many of its facilities were destroyed and others severely damaged. 33/

124. KISR seeks compensation for such damage and destruction. The claim is made for the costs of repair and reconstruction, including the costs incurred in retaining external consultants to conduct a comprehensive damage assessment survey.

125. In a technical mission to Kuwait undertaken in June 1999, certain KISR facilities were inspected on behalf of the Panel.

126. The amounts claimed in respect of the costs incurred for the damage assessment survey fall below the level of materiality adopted by the Panel. The Panel finds that an adjustment should be made to this part of the claim for insufficient evidence.

127. So far as the remainder of the claim is concerned, the Panel finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

128. In light of the above, the Panel recommends compensation in the amount of US$8,658,000 out of the US$11,124,538 claimed.

### 2. Other tangible property - US$281,559,787

#### (a) Equipment - US$43,964,017

129. KISR claims for the loss of various types of equipment, comprising experimental equipment, machinery, boats, office furnishings and transportation equipment, all of which it claims was lost during Iraq's invasion and occupation of Kuwait.

130. KISR calculated the replacement cost of the items lost by using a price index, which estimated the percentage difference between asset prices in its ledger and replacement cost, using samples of purchases of replacement items traced through to pre-invasion records. KISR applied a measure of depreciation to the replacement costs thereby derived. The Panel finds that this method of calculation was a reasonable one in the circumstances, but that KISR underestimated the depreciation adjustments required, and has made an adjustment for such inadequate accounting for depreciation.

131. The Panel also finds that adjustments should be made for enhancement, overstatement, saved expenses and insufficient evidence.

132. The Panel has made a further adjustment of US$5,185,000, being the amount of a post-liberation donation provided by the Government of Japan to be used by KISR for the replacement of scientific instruments lost as a direct result of Iraq's invasion and occupation of Kuwait. 34/

133. In light of the above, the Panel recommends compensation in the amount of US$15,667,000 out of the US$43,964,017 claimed.

### (b) Doha Reverse Osmosis Plant - US$25,078,873

134. KISR seeks compensation for the damage to and loss of elements of the reverse osmosis plant at the Doha water desalination facility. KISR claims that specialised osmosis equipment was damaged or dismantled and removed. After liberation only 10 per cent of the equipment was still usable.

135. The Panel finds that adjustments should be made for enhancement, overstatement, inadequate accounting for depreciation, saved expenses and insufficient evidence.

136. In light of the above, the Panel recommends compensation in the amount of US$7,663,000 out of the US$25,078,873 claimed.

### (c) NSTIC library collection - US$9,175,889

137. KISR seeks compensation for the loss of its library collection. 35/

138. In its response to Procedural Order 1, Iraq asserted that it had returned various books to Kuwait. The Panel finds that Iraq's assertion is not substantiated.

139. The Panel finds that adjustments should be made for enhancement, inadequate procurement process, inadequate accounting for depreciation and insufficient evidence.

140. In light of the above, the Panel recommends compensation in the amount of US$3,333,000 out of the US$9,175,889 claimed.

### (d) Products of research and development - US$195,417,000

141. KISR seeks compensation for lost information, such as computer records reports, specimens and the results of experiments. The claim is made for the loss of information compiled during the seven years prior to Iraq's invasion and occupation of Kuwait. 36/ The claim is based on the labour and materials costs (including the costs of technical support) invested in research and development, segregated according to KISR's six primary research and development divisions, namely, food resources, environmental resources, water resources, engineering, petroleum and petrochemicals, and technology and economics.

142. As set out at paragraphs 23 to 28 above, the Panel recommends that compensation be awarded for such lost information.

143. KISR has valued its claim as the loss of the investment it made in research and development in each of the divisions described above, as measured by the historic costs of that investment. KISR adjusted that value to account for information remaining after liberation and information that no longer retained significant value as at 2 August 1990. The Panel accepts this method of valuation, but finds that certain costs that were not associated with research and development projects should be excluded. The Panel has made the necessary adjustment, together with a further adjustment for arithmetical errors.

144. The Panel has also considered the extent to which the claim should be adjusted for economies of re-creation. KISR's premises were inspected on the Panel's behalf and the technical mission found that some pre-invasion publications and papers were available. The Panel has made adjustments to reflect the inadequate accounting for the availability of that pre-invasion information and of copies of applications (but not the underlying research data) for 29 patents, for technological advancements in computers, diagnostic equipment and scientific machinery, and for general institutional knowledge available to KISR.

145. The Panel has considered the level of support that KISR's central technical support section would have to provide to the research and development divisions. The value of such support is measured by KISR as the cost of providing technical support to these divisions, again adjusted to account for information remaining after liberation and information that no longer retained significant value as at 2 August 1990. The Panel accepts that methodology, but finds that a further adjustment to the amount claimed should be made to correct an overstatement in the value applied and to reflect the lower value of the investment in research and development after application of the adjustment for economies of re-creation.

146. The Panel finds that a further adjustment should be made for insufficient evidence.

147. In light of the above, the Panel recommends compensation in the amount of US$54,967,000 out of the US$195,417,000 claimed.

### (e) Unique scientific items - US$7,116,500

148. KISR seeks further compensation for the loss of "unique scientific items". Such items include seed banks, genetically selected animal herds, fish breeders and satellite photos, the costs of creation of which are claimed within the loss of "products of research and development" at paragraphs 141 to 147 above. KISR asserts that these items, being unique, have a value greater than the historic costs of creating them. KISR further asserts that the items by their nature are irreplaceable and has therefore made a claim for the excess of their value over the cost of their creation, as estimated by KISR's scientists.

149. The Panel does not accept that the estimates of additional value for the "unique scientific items" are sufficient to demonstrate that the items did in fact retain a value in excess of the cost of their creation. The Panel therefore does not recommend any compensation in respect of the amount claimed for the lost "unique scientific items".

### (f) Staff housing furniture - US$807,508

150. KISR seeks compensation for the loss of furniture purchased for the use of staff members at the accommodation provided to them. The Panel finds that adjustments should be made for method of valuation, inadequate accounting for depreciation, saved expenses and insufficient evidence and recommends compensation in the amount of US$283,000 out of the US$807,508 claimed.

## 3. Contract - US$2,765,949

### (a) Loss under the contract with Burgan Contracting Co - US$1,254,699

151. KISR claims that, prior to Iraq's invasion and occupation of Kuwait, it had negotiated a price with the Burgan Contracting Company ("Burgan") to perform construction work at its marine and fishery facility in Salmiya, and that the contract had not been formally concluded at the time of Iraq's invasion and occupation of Kuwait.

152. KISR claims that, after liberation, Burgan refused to enter into a contract for the work at the price originally agreed. Following a

competitive procurement procedure, KISR concluded a contract for the relevant work with a different contractor, at a price higher than that originally agreed with Burgan, but lower than Burgan's post-liberation price. KISR claims the difference between the costs incurred under the post-liberation contract and the price originally agreed with Burgan.

153. The Panel finds, in accordance with the general principles set out in the First "F3" Report, that if no formal contract had been concluded at the time of Iraq's invasion and occupation of Kuwait, compensation for contract interruption losses should be awarded only where there is evidence of consensus at the time of Iraq's invasion as to the essential provisions of the contract, namely the identification of the parties, the principal undertakings and the price to be paid. 37/

154. The Panel sought to establish whether or not such consensus existed, by Procedural Orders Nos. 7 and 27 issued in September 1999 and November 1999, respectively. In its responses, KISR stated that no written agreement was concluded with Burgan, although Burgan had submitted a binding tender that KISR planned to accept subject to "the final concurrence of its engineering consultants". KISR also explained that the consultants had not yet submitted a final recommendation to KISR for the selection of the successful tender, nor had they prepared the final tender documents for signature.

155. The Panel accordingly finds that in this case no formal contract was in existence, nor was there sufficient evidence of consensus so as to satisfy the test set out above. Accordingly, the Panel does not recommend any compensation for the loss claimed.

### (b) Loss under other contracts - US$1,511,250

156. KISR seeks compensation for general contractual debts and staff debts. The losses sustained in respect of general contractual debts arise under various small contracts for laboratory tests carried out for companies, businesses and Government organizations as well as under a contract for research services. The amounts claimed are those outstanding under the contracts as at 2 August 1990, and comprise invoiced and uninvoiced progress payments for on-going research projects.

157. As set out at paragraph 41 above, the Panel does not recommend any compensation for those debts that are owed by Government organizations.

158. In accordance with the principles set out at paragraph 42 above, the Panel recommends that compensation be awarded for the remaining general contractual debts only to the extent that KISR has demonstrated that the

debts are uncollectible and that the debtors' inability to pay is a direct result of Iraq's invasion and occupation of Kuwait.

159. The Panel sought information in Procedural Orders Nos. 7 and 37, issued in September 1999 and January 2000, respectively, with respect to the attempts that were made to collect the outstanding debts and why those that remained uncollected had not been collected.

160. In its responses, KISR stated, inter alia, that it had only attempted to collect general contractual debts for which documentation was available and that in most cases non-Governmental parties did not respond to letters of demand. The main reasons advanced for non-payment were the following:

(a) lack of documentation evidencing the debt;

(b) that the payment had been made but no proof of payment had survived Iraq's invasion and occupation of Kuwait;

(c) that the research had been started but not completed due to Iraq's invasion and occupation of Kuwait or had not been started at all;

(d) that the customers' requirements had changed following liberation; or

(e) that the debtors were unable to pay because their own activities had diminished as a result of Iraq's invasion and occupation of Kuwait.

161. As to those debts in respect of which the relevant research was interrupted or did not commence, the Panel finds that the losses are subsumed in KISR's claims for lost information and loss of revenue respectively, discussed at paragraphs 141 to 147 above and 165 to 169 below, respectively.

162. Having considered the information submitted by KISR, the Panel finds that KISR has not demonstrated that any of the remaining debts are uncollectible. 38/

163. KISR also seeks compensation for losses sustained in respect of debts owed by former members of staff. KISR submits that it did not take any steps to recover these debts because the collection costs would have exceeded the amounts at stake, and so claims the outstanding sums as a reasonable cost of mitigation. The Panel finds that KISR has not sufficiently mitigated its loss in failing to take any steps to recover the debts concerned.

164. In light of the above, the Panel does not recommend any compensation in respect of the amounts claimed.

### 4. Business transaction or course of dealing - US$32,462,485

#### (a) Lost contract income (post-invasion) - US$32,462,485

165. Prior to Iraq's invasion and occupation of Kuwait, KISR derived a portion of its income from providing research and development services to private companies and Government organizations. KISR claims that its contract revenues fell below what it would have received but for Iraq's invasion and occupation of Kuwait. The claim is made for the resultant loss of revenue, from 2 August 1990 until 30 June 1996. KISR asserts that such loss of revenue did not lead to a reduction in costs and therefore that loss of revenue is a net loss.

166. The Panel finds that the loss of revenue is compensable for the period that the revenue was affected as a direct result of Iraq's invasion and occupation of Kuwait, subject to deductions for exceptional post-liberation revenue, for revenue that would have been paid by other Government departments, and for saved expenses. 39/ The Panel finds that the revenue was affected as a direct result of Iraq's invasion and occupation of Kuwait at least until 30 June 1996.

167. The Panel sought information in Procedural Order 7 issued in September 1999, inter alia, as to the contract income received for the years 1993 to 1999, and the proportion of the revenue generated from 1984 to 1999 that was derived from other Government departments. In its response, KISR stated that its contract income would have increased post-liberation (applying the pre-invasion trend) and gave details of the proportion of its income derived from other Government departments. The Panel finds that notwithstanding the possibility that KISR's contract income would have increased, the proportion thereof derived from other Government departments would have remained at pre-invasion levels, which the Panel finds exceed two thirds of all contract income. The Panel has made an adjustment to the amount claimed to reflect such intra-Government revenue.

168. Finally, the Panel sought information from KISR as to the costs involved in the generation of its revenue. The information provided by KISR disclosed that the expenses that would have been incurred in earning the remaining lost revenue for the period 2 August 1990 to 30 June 1996 exceeded that lost revenue.

169. In light of the above, the Panel does not recommend any award of compensation in respect of the amounts claimed.

### 5. Other losses - US$51,659,044

#### (a) Cost of rebuilding KISR organization - US$36,695,525

#### (b) Additional training costs due to loss of experienced personnel - US$9,746,894

#### (c) Additional business development costs - US$3,344,519

#### (d) Cost of additional computer training - US$339,825 40/

#### (e) Cost of restoration of administrative software - US$1,532,281

170. KISR asserts that, as a direct result of Iraq's invasion and occupation of Kuwait, the organization was effectively destroyed.

171. For the first year following liberation, KISR claims that almost all activities of its staff were devoted to assessing the damage suffered by KISR and re-creating the organization and seeks compensation for its consequent losses. The claim is valued on the basis of the salaries paid to employees for its estimate of the man-hours that, absent Iraq's invasion and occupation of Kuwait, would have been devoted to research activities but which, in fact, were devoted to the above tasks, and of KISR's operating costs for the first year following liberation.

172. The Panel finds that the losses are compensable, subject to valuation and verification.

173. The Panel finds KISR's loss should be valued as the loss of productivity sustained by KISR during the first year following liberation, being the research which KISR staff would have produced had they not devoted their time to re-creation activities. Applying the principles set out at paragraph 34 above, the Panel has estimated the loss of productivity as a percentage of the employees' time and quantified it by reference to KISR's operating costs over that period.

174. KISR seeks further compensation for the costs incurred in providing additional training, additional business development costs, and for the costs of restoring its administrative software, some of which costs were incurred as many pre-invasion employees did not return after liberation. The Panel finds that the losses are compensable, but has made adjustments to exclude the costs consequent upon the failure of employees of certain nationalities to return. 41/ The Panel also finds that the compensable losses extended up to 30 June 1998, and has therefore assessed the losses for the items described above until that date, calculated as the loss of the man-hours that would have been devoted to research and development absent Iraq's invasion and occupation of Kuwait.

175. The Panel finds that adjustments should be made for method of valuation, overstatement and insufficient evidence.

176. In light of the above, the Panel recommends compensation in the amount of US$9,900,000 out of the US$51,659,044 claimed.

### 6. Payment or relief to others - US$10,771,889

177. KISR seeks compensation in the amount of US$10,771,889 for relief paid to its Kuwaiti employees, comprising salaries, incentive bonuses, 42/ holiday pay and rent paid on employees' accommodation, in each case for the seven-month occupation period.

178. In its response to the Panel's requests for information, KISR confirmed that incentive bonuses and holiday pay formed standard parts of all the Kuwaiti employees' annual salary packages.

179. The response of the Government to the Panel's questions regarding the Social Security Fund 43/ states that the amount claimed is based upon the employees' salaries after deduction of the social security contribution. The Panel accepts this statement. However, the Panel notes that KISR is further seeking compensation as a separate head of claim for such social security contributions. 44/ The Panel recommends, in accordance with paragraph 41 of the First "F3" Report (repeated as paragraph 41 of the annex), that no compensation be awarded for such sums.

180. As regards the salary packages, as set out at paragraph 36 of the First "F3" Report, and subject to the percentage adjustment set out at paragraph 48 thereof, the Panel accepts the compensability of such relief paid to employees.

181. As regards that part of the claim seeking compensation for pre-paid rent on housing, the claim is made for the period during which the employees could not occupy the properties.

182. The Panel recommends, in accordance with paragraphs 83 to 85 of the First "F3" Report, that compensation be awarded for that portion of the pre-paid rent referable to the period that KISR was unable to use the premises as a direct result of Iraq's invasion and occupation of Kuwait. The Panel finds that the period in this case is 2 August 1990 to 28 February 1991.

183. The Panel finds that adjustments should be made for overstatement and insufficient evidence.

184. In light of the above, the Panel recommends compensation in the amount of US$4,228,000 out of the US$10,771,889 claimed.

## D. Ministry of Public Works (Bayan Palace)

### Government Claim No. 4, UNCC Claim No. 5000040

Table 4. Summary Table for Ministry of Public Works (Bayan Palace)

| Loss type/Loss element | Amount claimed US$ | Amount recommended US$ | Paragraph references |
|---|---|---|---|
| Contract | | | |
| a) Bayan Palace | 24,206,337 | 8,720,000 | 188-190 |
| b) Amiri Diwan | 58,053,197 | 12,094,000 | 191-193 |
| c) Telecommunications Tower | 30,462,037 | 23,418,000 | 194-197 |
| d) Audit Bureau | 4,716,242 | 1,962,000 | 198 |
| e) MPW/MEW headquarters | 19,796,513 | 5,333,000 | 199-202 |
| Sub-total | 137,234,326 | 51,527,000 | |
| Real property | | | |
| a) Bayan Palace residences | 25,528,540 | 13,015,000 | 206-208 |
| b) Bayan Palace conference building | 51,496,679 | 30,235,000 | 209-211 |
| c) Bayan Palace temporary conference facilities | 3,170,728 | 2,616,000 | 212-213 |
| Sub-total | 80,195,947 | 45,866,000 | |
| Other tangible property | | | |
| a) Bayan Palace residences | 8,226,502 | 5,702,000 | 214-216 |
| b) Bayan Palace conference building | 5,994,716 | 1,605,000 | 217-219 |
| c) Bayan Palace temporary conference facilities | 1,222,549 | 428,000 | 220-224 |
| Sub-total | 15,443,767 | 7,735,000 | |
| Total | 232,874,040 | 105,128,000 | |
| Interest | 37,008,640 | | |

### 1. Contract - US$137,234,326

#### (a) Introduction

185. The Ministry of Public Works ("MPW") is responsible for the construction and maintenance of the Government's public assets such as roads, sewers and buildings.

186. In respect of the projects set out below, MPW claims compensation for losses sustained due to the interruption of contracts that were in existence on 2 August 1990. Such losses included the costs of site restoration and the additional costs of completing the contracts. 45/ In the latter case, MPW asserts that the additional costs are to cover increased costs in the post-liberation period.

187. The Panel, continuing its approach set out at paragraph 63 of the First "F3" Report (repeated as paragraph 63 of the annex), finds that the losses claimed are compensable in so far as they are attributable to the factors set out in that paragraph, namely, site restoration costs, additional transportation costs and additional insurance costs. The evidence shows that part only of the losses claimed is attributable to these factors.

### (b) Bayan Palace - US$24,206,337

188. MPW asserts that eight contracts for the design and construction of buildings at the Bayan Palace were interrupted by Iraq's invasion and occupation of Kuwait. The Panel has calculated the amount of the losses claimed that is attributable to the factors set out at paragraph 187 above.

189. One contract, for the supply of furniture and finishes for the buildings, had not been formally concluded at the time of Iraq's invasion and occupation of Kuwait. In addition, at the time MPW submitted its claim, it had not entered into a post-liberation contract. MPW claims the difference between its estimate of what the contract price would have been had the contract been finalised and its estimate of the price of the anticipated post-liberation contract. The Panel finds, applying the principles set out at paragraph 153 above, that there is insufficient evidence of consensus as to the essential provisions of this pre-invasion arrangement and so does not recommend any compensation in respect of it.

190. In light of the above, the Panel recommends compensation in the amount of US$8,720,000 out of the US$24,206,337 claimed.

### (c) Amiri Diwan - US$58,053,197

191. MPW asserts that fourteen contracts for the design and construction of five major buildings and several smaller ones for the Amiri Diwan were interrupted by Iraq's invasion and occupation of Kuwait. The Panel has calculated the amount of the losses claimed that is attributable to the factors set out at paragraph 187 above.

192. In addition, two contracts, for mechanical works and a conveying system, respectively, had not been formally concluded at the time of Iraq's invasion and occupation of Kuwait. MPW claims the difference between its estimate of what the contract prices would have been had the contracts been finalised and the price paid for the works after liberation. The Panel finds, applying the principles set out at paragraph 153 above, that there is insufficient evidence of consensus as to the essential provisions of these pre-invasion arrangements and so does not recommend any compensation in respect of them.

193. In light of the above, the Panel recommends compensation in the amount of US$12,094,000 out of the US$58,053,197 claimed.

### (d) Telecommunications tower - US$30,462,037

194. MPW asserts that two contracts for the design and construction of a telecommunications tower and adjacent buildings were interrupted by Iraq's invasion and occupation of Kuwait.

195. One of the post-liberation contracts required the contractor to provide approximately thirty six more personnel than would have been required in the absence of Iraq's invasion and occupation of Kuwait. MPW asserts that some of these additional personnel were required to replace approximately 20 MPW employees who did not return after liberation. The Panel finds that the employment of these additional personnel was not a direct result of Iraq's invasion and occupation of Kuwait, particularly given that the post-liberation contract was not entered into until August 1993. It therefore does not recommend any compensation for their cost. However, the Panel recommends that compensation be awarded for the remaining additional personnel because they were required to supervise site restoration works that were necessary as a direct result of Iraq's invasion and occupation of Kuwait.

196. In addition, MPW and the construction contractor were negotiating variation orders to incorporate certain design changes into the project at the time of Iraq's invasion and occupation of Kuwait. MPW claims the difference between its estimate of what the price of the works pursuant to the variation orders would have been had the variation orders been finalised and the price paid for the works after liberation. The Panel finds, applying the principles set out at paragraph 153 above, that there is insufficient evidence of consensus as to the essential provisions of these pre-invasion arrangements and so does not recommend any compensation in respect of them.

197. In light of the above, and incorporating the Panel's calculation of the amount of the losses claimed that is attributable to the factors set out at paragraph 187 above, the Panel recommends compensation in the amount of US$23,418,000 out of the US$30,462,037 claimed.

### (e) Audit Bureau - US$4,716,242

198. MPW asserts that two contracts for the construction of headquarters for the State Audit Bureau were interrupted by Iraq's invasion and occupation of Kuwait. The Panel has calculated the amount of the losses claimed that is attributable to the factors set out at paragraph 187 above

and, accordingly, recommends compensation in the amount of US$1,962,000 out of the US$4,716,242 claimed.

### (f) MEW-MPW headquarters - US$19,796,513

199. MPW asserts that two contracts for the construction of adjacent headquarters for itself and the Ministry of Electricity and Water were interrupted by Iraq's invasion and occupation of Kuwait.

200. One of the post-liberation contracts was concluded with a design consultant who had been engaged before Iraq's invasion and occupation of Kuwait. Amongst other things, this contract purported to ensure that the consultant remained liable for any claims arising from defects in its original design and required the redesign of the headquarters' interiors. The Panel finds that a further contract was not required to ensure the contractor remained liable for claims arising from defects in its original design and so does not recommend any compensation for the costs so incurred. Further, the Panel finds that the redesign of the headquarters' interiors was not a direct result of Iraq's invasion and occupation of Kuwait.

201. The Panel also notes that the costs claimed for site restoration include the costs of producing a damage assessment report on the relevant project site. This damage assessment report incorporated findings regarding the destruction of temporary offices that were, in fact, the responsibility of the contractor. The Panel finds that an adjustment should, in principle, be made so as to reflect the cost of that portion of the damage assessment report referable to the temporary offices. However, the Panel finds that to require the contractor to undertake a damage assessment report on the temporary offices would, in the circumstances of the need for the Government to undertake an assessment of the damage at the project site, be too technical and rigid an approach. 46/ The Panel therefore recommends that compensation be awarded for the entire cost of the damage assessment report, including that part referable to the temporary offices, provided that the contractor has not made a duplicate claim. The Panel is satisfied that the sub-contractor has not made a duplicate claim.

202. In light of the above, and incorporating the Panel's calculation of the amount of the losses claimed that is attributable to the factors set out at paragraph 187 above, the Panel recommends compensation in the amount of US$5,333,000 out of the US$19,796,513 claimed.

### 2. Real property - US$80,195,947

#### (a) Introduction

203. As further set out below, MPW asserts that loss and damage were occasioned to various buildings and their contents in the Bayan Palace, including three of the residences used as accommodation by visitors to the Bayan Palace. 47/ MPW further claims the cost of constructing and furnishing a temporary conference facility, which it asserts was required so that Kuwait could host the annual GCC summit in December 1991. The hosting of the summit by Kuwait had been planned before Iraq's invasion and occupation of Kuwait. The existing conference building at the Bayan Palace could not be used because it was damaged.

204. The Panel finds that the Government's decision to host the GCC summit as planned does not break the chain of causation between Iraq's invasion and occupation of Kuwait and the construction and furnishing of the temporary conference facility. Further, it was reasonable, given the nature of the activities carried on at the Bayan Palace, 48/ that a temporary facility be built in place of the damaged conference building. 49/ Compensation should therefore be awarded for the cost of constructing and furnishing the temporary conference facility. 50/

205. The Panel notes that the construction and furnishing of the temporary conference facility and the repair and re-furnishing of the residences were undertaken in the immediate post-liberation period when the prices of goods and services in Kuwait were, in general, higher than the norm. Applying the test set out at paragraph 31 above, the Panel finds that, in light of the Government's need for secure conference facilities and accommodation for the purposes of the GCC summit, the works were of such urgency that MPW could not reasonably be required to wait until prices had returned to normal patterns.

#### (b) Bayan Palace residences - US$25,528,540

206. MPW seeks compensation for the cost of repairs to the residences discussed above.

207. The Panel finds that, although not all of the contracts for repair were awarded using competitive procurement procedures, the costs incurred were reasonable and the absence of such procedures did not lead to increased costs. However, the Panel finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

208. In light of the above, the Panel recommends compensation in the amount of US$13,015,000 out of the US$25,528,540 claimed.

### (c) Bayan Palace conference building - US$51,496,679

209. MPW seeks compensation for the cost of repairs to the conference building in the Bayan Palace.

210. The Panel finds that, although a contract for supervision and damage assessment was not awarded using competitive procurement procedures, the cost incurred was reasonable and the absence of such procedures did not lead to increased costs. However, adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

211. In light of the above, the Panel recommends compensation in the amount of US$30,235,000 out of the US$51,496,679 claimed.

### (d) Bayan Palace temporary conference facilities - US$3,170,728

212. MPW claims the cost of constructing the temporary conference facility discussed above, adjusted to take account of its estimated residual value at the time the conference building was fully repaired. While the Panel agrees with this method of valuation, it finds that an adjustment should be made for insufficient evidence.

213. In light of the above, the Panel recommends compensation in the amount of US$2,616,000 out of the US$3,170,728 claimed.

## 3. Other tangible property - US$15,443,767

### (a) Bayan Palace residences - US$8,226,502

214. MPW seeks compensation for the loss of, and damage to, tangible property such as furniture and interior decorating accessories and works of art from the Bayan Palace residences discussed above. 51/

215. The Panel finds that adjustments should be made for saved expenses and insufficient evidence.

216. In light of the above, the Panel recommends compensation in the amount of US$5,702,000 out of the US$8,226,502 claimed.

### (b) Bayan Palace conference building - US$5,994,716

217. MPW seeks compensation for the loss of tangible property such as furniture and interior decorating accessories from the Bayan Palace

conference building. The Panel finds that the cost of replacement was less than the amount claimed by MPW and therefore that an adjustment should be made for overstatement. Adjustments should also be made for saved expenses and insufficient evidence.

218. The Panel agrees with MPW's method of calculating depreciation. However, the Panel finds that as a result of the overstatement of the cost of replacing the tangible property, MPW has also overstated the deduction required for depreciation. The Panel has therefore re-calculated the deduction to be applied for depreciation.

219. In light of the above, the Panel recommends compensation in the amount of US$1,605,000 out of the US$5,994,716 claimed.

### (c) Bayan Palace temporary conference facilities - US$1,222,549

220. MPW seeks compensation for the cost of providing furniture for the temporary conference facilities.

221. The Panel finds that a deduction should be made equal to the value of those items of furniture that were suitable for use as replacements for the items of furniture lost from the Bayan Palace conference building. The Panel has, at paragraph 219 above, recommended compensation for the furniture lost from the Bayan Palace conference building.

222. MPW claims the cost of purchasing the furniture, adjusted to take account of its estimated residual value at the time the conference building was fully repaired. The Panel agrees with this method of valuation. However, as a result of the adjustment set out at paragraph 221 above, the deduction for the residual value of the furniture should be lower than that submitted by MPW. The Panel has therefore recalculated the deduction to be applied for residual value.

223. The Panel finds that an adjustment should also be made for insufficient evidence.

224. Accordingly, the Panel recommends compensation in the amount of US$428,000 out of the US$1,222,549 claimed.

## E. Ministry of Electricity and Water (Stores Department)

### Government Claim No. 6, UNCC Claim No. 5000042

Table 5. Summary Table for Ministry of Electricity and Water (Stores Department)

| Loss type/Loss element | Amount claimed US$ | Amount recommended US$ | Paragraph references |
|---|---|---|---|
| Other tangible property | 270,116,078 | 172,992,000 | 225-229 |
| Real property | | | |
| a) Communication systems | 12,213,250 | 2,820,000 | 230-233 |
| b) Emergency electrical department | 8,083,960 | 2,597,000 | 234-238 |
| c) Primary substations | 553,722 | 240,000 | 239-243 |
| d) Water division | 44,392,319 | 29,605,000 | 244-247 |
| Sub-total | 65,243,251 | 35,262,000 | |
| Contract | | | |
| a) Communications systems | 4,710,082 | 4,182,865 | 250-252 |
| b) Water division | 22,164,672 | 3,266,000 | 253-257 |
| Sub-total | 26,874,754 | 7,448,865 | |
| Total | 362,234,083 | 215,702,865 | |
| Interest | 57,566,160 | | |

### 1. Other tangible property - US$270,116,078

#### (a) Stores department - US$270,116,078

225. The Ministry of Electricity and Water ("MEW") is responsible for the provision of electricity and water in Kuwait.

226. MEW seeks compensation for the loss or destruction of spare parts, tools and other equipment from various storage areas in Kuwait.

227. MEW claims compensation for the entire pre-invasion contents of a number of storage areas notwithstanding that all such contents were not, in fact, completely lost or destroyed. MEW asserts that the items remaining after liberation were worthless because they consisted of incomplete or damaged parts. The Panel finds, however, that the contents remaining at store number 8 at Subhan Central Stores had some salvage value and that an appropriate adjustment should therefore be made.

228. The Panel also finds that adjustments should be made to reflect an error made by MEW in calculating its claim, for shrinkage (that is, pilferage or erroneous bookkeeping) that would have occurred in the absence of Iraq's invasion and occupation of Kuwait, and for insufficient evidence.

229. In light of the above, the Panel recommends compensation in the amount of US$172,992,000 out of the US$270,116,078 claimed.

### 2. Real property - US$65,243,251

#### (a) Communications systems - US$12,213,250 52/

230. MEW seeks compensation for the loss of, and damage to, the communications systems linking its control centres with its major electrical power stations and substations.

231. MEW states that it has decided not to replace some of the equipment that was lost because of budgetary constraints or because the equipment has been made obsolete by new technology. The Panel, consistent with the decision set out at paragraphs 65 to 66 of the First "F3" Report (repeated as paragraphs 65 to 66 of the annex), finds that the loss of such equipment is nonetheless compensable and has valued the loss as the cost of replacing the equipment at such time as it would be reasonable, in all the circumstances, to expect replacement to have taken place. However, the Panel finds that adjustments should be made for saved expenses, the fact that some of the equipment not replaced was obsolete, inadequate accounting for depreciation and insufficient evidence.

232. For the equipment that has been replaced or repaired, the Panel finds that adjustments should be made for saved expenses and insufficient evidence.

233. In light of the above, the Panel recommends compensation in the amount of US$2,820,000 out of the US$12,213,250 claimed.

#### (b) Emergency electrical department - US$8,083,960 53/

234. MEW seeks compensation for the cost of repairing damage to its overhead lines and underground cables.

235. MEW's claim includes the estimated replacement cost of items that were taken from MEW's stores and used for the repairs. As set out at paragraph 33 above, the Panel recommends that compensation be awarded for such items.

236. MEW's claim also includes the estimated cost of undertaking repairs that had not been performed at the time the claim was submitted to the Commission. MEW has now provided information on the repairs that were subsequently undertaken and the Panel finds that an adjustment should be made to correct an overstatement in MEW's estimate.

237. The Panel also finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

238. In light of the above, the Panel recommends compensation in the amount of US$2,597,000 out of the US$8,083,960 claimed.

### (c) Primary substations - US$553,722 54/

239. MEW asserts that many of its primary substations were damaged or destroyed. This claim is made only for repairs overseen by the Primary Substation Maintenance Department. The other repairs to the primary substations are considered at paragraphs 284 to 289 below.

240. Some of the repairs required were performed by MEW's existing employees. The Panel has valued the loss as set out at paragraph 34 above, and finds that the value of the work that these particular employees would have performed if they had not worked on the repairs is equivalent to the amount of their salaries.

241. As set out at paragraph 33 above, the Panel recommends that compensation be provided for the items taken from MEW's stores and used for the repairs.

242. The Panel finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

243. In light of the above, the Panel recommends compensation in the amount of US$240,000 out of the US$553,722 claimed.

### (d) Water division - US$44,392,319 55/

244. MEW seeks compensation for damage to its water supply facilities, including pipes, pumps and reservoirs.

245. At the time it submitted its claim, MEW had not commenced the replacement of five destroyed reservoirs. Its claim was based on the cost incurred in constructing similar reservoirs in 1979 with adjustments for inflation and depreciation. While the Panel accepts this method of valuation, it notes that MEW's claim asserts that three of the destroyed reservoirs will be replaced with one larger reservoir. The Panel finds that an adjustment should be made to reflect the lower overall costs of this approach.

246. The Panel also finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

247. In light of the above, the Panel recommends compensation in the amount of US$29,605,000 out of the US$44,392,319 claimed.

### 3. Contract - US$26,874,754

#### (a) Introduction

248. In respect of the projects set out below, MEW claims compensation for losses sustained due to the interruption of contracts that were in existence on 2 August 1990. Such losses included the costs of site restoration and the additional costs of completing the contracts. 56/ In the latter case, MEW asserts that the additional costs are to cover increased costs in the post-liberation period.

249. The Panel, continuing its approach set out at paragraph 63 of the First "F3" Report, finds that the losses claimed are compensable in so far as they are attributable to the factors set out in that paragraph, namely, site restoration costs, additional transportation costs and additional insurance costs. The evidence shows that part only of the losses claimed is attributable to these factors.

#### (b) Communications systems - US$4,710,082 57/

250. MEW asserts that a contract for the construction of a district control centre at Jahra was interrupted by Iraq's invasion and occupation of Kuwait. There was no additional cost in completing the contract after liberation, so the Panel has calculated only the amount of the loss claimed attributable to site restoration costs. 58/

251. The Panel finds that the site restoration costs equal the amount claimed and therefore recommends payment in full in the amount of US$4,182,865 for the interruption of this contract.

252. MEW also asserts that a contract for the maintenance of a district control centre in the "Town" section of Kuwait City was interrupted by Iraq's invasion and occupation of Kuwait. The Panel has calculated the amount of the loss claimed that is attributable to the factors set out at paragraph 249 above and finds that it is exceeded by the amount that MEW saved on maintenance of the district control centre for the period from the date of Iraq's invasion of Kuwait until the contract was restarted. Accordingly, the Panel does not recommend any compensation for the interruption of this contract.

### (c) Water division - US$22,164,672 59/

253. MEW asserts that 23 contracts in relation to the repair, maintenance, construction or upgrade of MEW's water network were interrupted by Iraq's invasion and occupation of Kuwait.

254. Work under seven of the contracts has not yet been resumed. 60/ However, the Panel finds that these contracts will all be resumed at some stage and therefore recommends compensation in accordance with paragraph 37 above.

255. For those contracts that have been restarted, the Panel has calculated the amount of the losses claimed attributable to the factors set out at paragraph 249 above.

256. Four of the interrupted contracts were for routine maintenance works on a number of facilities. The Panel finds that the amount that would have been spent on the routine maintenance of those facilities for the period from 2 August 1990 until the contracts were restarted exceeds the costs attributable to the factors set out at paragraph 249 above for the contracts. As a result, the Panel recommends that no compensation be awarded for the interruption of these contracts.

257. In light of the above, the Panel recommends compensation in the amount of US$3,266,000 out of the US$22,164,672 claimed.

## F. Ministry of Defense (Fast Attack)

### Government Claim No. 12, UNCC Claim No. 5000110

Table 6. Summary Table for Ministry of Defense (Fast Attack)

| Loss type/Loss element | Amount claimed US$ | Amount recommended US$ | Paragraph references |
|---|---|---|---|
| Other tangible property | | | |
| a) The stolen ships | 425,516,000 | 46,557,000 | 258-264 |
| b) War related maintenance costs for the Al-Sanbouk and the Istiglal | 52,709,162 | 14,271,000 | 265-271 |
| c) Specialized spare parts purchases for the Al-Sanbouk and Istiglal long refit. | 5,215,352 | 3,129,000 | 272-274 |
| Total | 483,440,514 | 63,957,000 | |
| Interest | 76,827,960 | | |

### 1. Other tangible property - US$483,440,514

#### (a) The stolen ships - US$425,516,000

258. The Ministry of Defense ("MoD") seeks compensation for the loss of six ships of the Kuwait Navy that it asserts were seized by Iraq shortly after its invasion and occupation of Kuwait. MoD claims that the ships were taken to an Iraqi naval base where the Iraqi Navy used them as warships to patrol the Persian Gulf. MoD states that it believes that all the ships were destroyed during the course of the military operations against Iraq pursuant to Security Council resolution 678 (1990). The Panel accepts that the ships were lost, probably as a result of bombing by the Allied Coalition Forces.

259. In its original claim, MoD valued the loss of its ships on the basis of replacement cost as estimated by the original shipbuilder located in Germany. In a supplemental submission of claim filed in May 1998, MoD stated that the lost ships had been replaced with eight smaller ships supplied by a French manufacturer at a price in excess of the original estimated replacement cost, but no consequential amendment was made to the amount claimed. The Panel has therefore valued the loss on the basis of the original estimated replacement cost.

260. The Panel notes that the replacement cost estimate relied upon by MoD was obtained from the original shipbuilder, and without competitive procurement procedures. The Panel finds that the market for such ships is intensely competitive, and that it is normal practice for the purchase of

such ships to be put out to tender on a worldwide basis. The Panel is satisfied that there were more than 15 shipbuilders who were capable of supplying the ships at the relevant time, and therefore that the use of competitive procurement procedures would have led to substantially lower offer prices. The Panel has therefore made an adjustment, for an inadequate procurement process, to the amount claimed.

261. As a result of the adjustment made by the Panel in the preceding paragraph in respect of the inadequate procurement process, the Panel finds that the deduction MoD applied against the amount claimed in respect of depreciation exceeds the deduction warranted, in that the percentage deduction should be applied to a lower replacement cost. The Panel has therefore re-calculated the deduction to be applied for depreciation.

262. The Panel is satisfied that the ships would have required annual maintenance and at least two long refits over their life (estimated by MoD at 25 years). The costs of undertaking such maintenance are significant, as demonstrated by the amounts claimed for the long refits in respect of the 2 surviving ships considered at paragraphs 265 to 271 below. Accordingly, the Panel finds that an adjustment should be made for the maintenance expenses saved.

263. The Panel finds that a further adjustment should be made for insufficient evidence.

264. In light of the above, the Panel recommends compensation in the amount of US$46,557,000 out of the US$425,516,000 claimed.

### (b) War related maintenance costs for the Al-Sanbouk and the Istiglal - US$52,709,162

265. MoD seeks compensation for repair and overhaul costs for the Al-Sanbouk and Istiglal missile ships. The claim is based on the costs paid to the ships' manufacturer for the repair and overhaul work on the Al-Sanbouk and the estimated cost of such work for the Istiglal. MoD claims the proportion of the cost of the repair and overhaul work that it would have been able to accomplish internally, but for Iraq's destruction of the maintenance facilities at Kuwait's naval base (the "Base"). 61/

266. Each of these ships was on routine patrol when Iraq occupied the Base and was ordered by Kuwait Naval Command to Bahrain from where both were operated until liberation. As part of its verification and valuation of the claim, the Panel instructed the secretariat and the expert consultants to inspect the Al-Sanbouk and the Istiglal on the Panel's behalf. This inspection was carried out during a technical mission to Kuwait undertaken in June 1999.

267. The repair and overhaul work was required due to a lack of maintenance during the occupation period and accelerated wear rates arising from the additional usage while the ships were operating out of Bahrain. The Panel finds that any costs arising from the additional usage are military costs within Governing Council decision 19 and are therefore not compensable. 62/ The Panel finds, however, that the costs arising from the lack of maintenance are direct losses and are therefore compensable.

268. The repairs to, and overhaul of, the Al-Sanbouk were carried out as part of a long refit of the ship which was overdue. A long refit comprises the disassembly of the ship, the refurbishment of all major components and the overhaul of the ship's structure. The Panel has considered whether the additional usage increased the cost of the long refit and finds that, given the comprehensive nature of a long refit, any such increase was negligible. 63/ Accordingly, no adjustment under Governing Council decision 19 for military costs is required.

269. MoD asserts that prior to Iraq's invasion and occupation of Kuwait it had the facilities and personnel to carry out a significant part of the long refit of the Al-Sanbouk and identifies 60 per cent by value of the long refit contract as representing its pre-invasion maintenance capacity. However, the Panel notes that MoD had not previously carried out a long refit on the Al-Sanbouk, although the Panel accepts that MoD had undertaken at least one annual refit on each vessel prior to Iraq's invasion and occupation of Kuwait. Accordingly, the Panel finds that although MoD may have been capable of doing some of the work involved in the long refit, 60 per cent by value overstates the capacity lost. Accordingly, the Panel finds that an adjustment should be made for overstatement to the amount claimed for repair and overhaul work in this regard.

270. In respect of the estimated cost claimed for the Istiglal, the Panel finds that given the lapse of time since its last annual refit, a long refit is overdue. However, since the majority of the repairs to the facilities at the Base have now been completed, MoD would be able to undertake all the work on a long refit that it would have been able to undertake prior to Iraq's invasion and occupation of Kuwait. Accordingly, the Panel does not recommend any compensation in respect of the amount claimed.

271. In light of the above, the Panel recommends compensation in the amount of US$14,271,000 out of the US$52,709,162 claimed.

### (c) Specialized spare parts purchases for the Al-Sanbouk and Istiglal long refit - US$5,215,352

272. MoD seeks compensation for the loss of its general store of spare parts as well as several electronic and armament components, which, it asserts, were being held for installation on the Al-Sanbouk and Istiglal. MoD asserts that the replacements for these components had to be specially purchased for the long refit of the Al-Sanbouk and in anticipation of similar work being performed on the Istiglal. The Panel has made investigations as to the type of spare parts lost and the parts supplied by the contractor in the long refit of the Al-Sanbouk and finds no evidence of duplication between the claims for the war-related maintenance costs discussed above and the claim for specialised spare parts relating to the Al-Sanbouk.

273. The Panel finds, however, that an adjustment should be made for insufficient evidence.

274. In light of the above, the Panel recommends compensation in the amount of US$3,129,000 out of the US$5,215,352 claimed.

## G. Ministry of Electricity and Water (Power Plants)

### Government Claim No. 13, UNCC Claim No. 5000111

Table 7. Summary Table for Ministry of Electricity and Water (Power Plants)

| Loss type/Loss element | Amount claimed US$ | Amount recommended US$ | Paragraph references |
|---|---|---|---|
| Real property | | | |
| a) Power plants | 107,852,784 | 53,601,000 | 275-278 |
| b) Underground cables and overhead lines maintenance department | 14,055,563 | 4,413,000 | 279-283 |
| c) Electrical networks projects construction department | 404,590,493 | 217,055,000 | 284-289 |
| d) Shuwaikh distillation facilities | 41,837,834 | 31,541,000 | 290-293 |
| Sub-total | 568,336,674 | 306,610,000 | |
| Payment or relief to others | 36,221,863 | 14,230,000 | 294-298 |
| Other tangible property | 2,113,620 | 615,000 | 299-311 |
| Total | 606,672,157 | 321,455,000 | |
| Interest | 96,412,240 | | |

### 1. Real property - US$568,336,674

### (a) Power plants - US$107,852,784 64/

275. MEW seeks compensation in relation to five power stations. It asserts that four were damaged and one destroyed as a result of Iraq's invasion and occupation of Kuwait. 65/

276. The damage to one power station, at Doha West, included the destruction of its control centre. MEW's inspection of the turbines and generators of the power station did not reveal any damage. In order to provide some emergency power to the relevant region, MEW installed a temporary control system and re-started the generation facility at the power station. Damage to a turbine and generator was then caused by a failure of part of the oil system. This failure would have been detected by the destroyed control centre, but the temporary control system did not monitor the oil system. The Panel finds that MEW's actions before re-starting the generation facility at the power station were reasonable in the circumstances and recommends that compensation be awarded for all the damage to the Doha West power station, including that to the turbine and generator.

277. MEW's claim makes an allowance for depreciation only in the case of the repairs to the Shuaiba South power station. The Panel finds, however, that adjustments should be made for inadequate accounting for depreciation in relation to all of the repairs to the power stations. 66/ The Panel also finds that adjustments should be made for saved expenses and insufficient evidence.

278. In light of the above, the Panel recommends compensation in the amount of US$53,601,000 out of the US$107,852,784 claimed.

### (b) Underground cables and overhead lines maintenance department - US$14,055,563

279. MEW seeks compensation for the cost of the repairs to its overhead lines and underground cables that were undertaken by the above-captioned department.

280. MEW's claim includes the estimated replacement cost of items that were taken from MEW's stores and used for the repairs. As set out at paragraph 33 above, the Panel recommends that compensation be awarded for such items.

281. MEW's claim also includes the estimated cost of undertaking repairs that had not been performed at the time the claim was submitted to the Commission. MEW has now provided information on the repairs that were subsequently undertaken and the Panel finds that an adjustment should be made to correct an overstatement in MEW's initial estimate.

282. The Panel also finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

283. In light of the above, the Panel recommends compensation in the amount of US$4,413,000 out of the US$14,055,563 claimed.

### (c) Electrical networks projects construction department - US$404,590,493 67/

284. MEW asserts that the above-captioned department managed 63 contracts for the inspection, repair, replacement and reconstruction of MEW's primary substations and other electrical network facilities.

285. Some of the repairs performed were to facilities on Failaka Island. The Panel finds that the repairs were undertaken before the Government decided to abandon Failaka Island and therefore recommends compensation based on the cost of the repairs undertaken. 68/

286. MEW's claim includes the replacement cost of items that were taken from MEW's stores and used for the repairs on Failaka Island. As set out at paragraph 33 above, the Panel recommends that compensation be awarded for such items.

287. Not all of the contracts were awarded using competitive procurement procedures and some were performed in the immediate post-liberation period when prices of goods and services were, in general, higher than the norm. Applying the tests set out at paragraph 138 of the First "F3" Report and paragraph 31 above, the Panel finds that, in light of Kuwait's need rapidly to restore its critical electrical supply and distribution systems, the works were of such urgency that MEW could not reasonably be required to resort to competitive procurement procedures nor wait until prices had returned to normal patterns.

288. The Panel also finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

289. In light of the above, the Panel recommends compensation in the amount of US$217,055,000 out of the US$404,590,493 claimed.

### (d) Shuwaikh distillation facilities - US$41,837,834

290. MEW asserts that a power station and a desalination complex (consisting of seven separate desalination plants) were damaged by bombing and lack of normal maintenance. However, due to their age at the time of Iraq's invasion and occupation of Kuwait, MEW decided not to repair the power station 69/ or four of the desalination plants. The claim is therefore submitted only in relation to the three remaining desalination plants.

291. The repair of the desalination plants was undertaken by the sole contractor who responded to the tender documents issued. The Panel finds that, given the importance of the provision of fresh drinking water to the people of Kuwait, it was reasonable for MEW to proceed without re-tendering the work.

292. However, the Panel finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

293. In light of the above, the Panel recommends compensation in the amount of US$31,541,000 out of the US$41,837,834 claimed.

### 2. Payment or relief to others - US$36,221,863

#### (a) Relief paid to employees - US$36,221,863

294. MEW seeks compensation in the amount of US$36,221,863 for relief paid to employees. 70/

295. The evidence shows that the amount claimed is based upon the employees' salaries after deduction of the social security contribution.

296. As set out at paragraph 36 of the First "F3" Report, and subject to the percentage adjustment set out at paragraph 48 thereof (repeated as paragraphs 36 and 48 of the annex, respectively), the Panel accepts the compensability of such relief paid to employees.

297. The Panel finds that an adjustment should also be made for insufficient evidence.

298. In light of the above, the Panel recommends compensation in the amount of US$14,230,000 out of the US$36,221,863 claimed.

### 3. Other tangible property - US$2,113,620

#### (a) Computer centre - US$2,113,620 71/

299. MEW asserts that computer equipment and peripherals, computer software, office equipment and furniture, and records were lost from its computer centre.

300. The largest element of MEW's claim for its computer centre relates to a lost Unisys A9 mainframe computer.

301. MEW asserts that it took time to assess the losses and plan for the restoration of the centre. As a result, MEW did not immediately replace the Unisys A9. Instead, it leased a Unisys A6 in March 1992.

302. In August 1993, MEW installed an IBM AS/400-F35 mainframe computer, which is less powerful than a Unisys A9. From early 1994 to early 1995, MEW undertook a first upgrade to the IBM AS/400-F35. During the rest of 1995, MEW undertook a second upgrade to the IBM AS/400-F35. Upon the completion of these two upgrades, the computer was the equivalent of an IBM AS/400-F60. The Panel finds that the functionality of an IBM AS/400-F60 is superior to the lost Unisys A9.

303. MEW claims the cost of leasing the Unisys A6 from March 1992 until August 1993, the cost of the IBM AS/400-F35 and the two upgrades to it, the

cost of consultants to install and configure the IBM AS/400-F35, and the cost of consultants to install and configure the two upgrades to the IBM AS/400-F35.

304. The Panel recommends that compensation be awarded for the cost of leasing the Unisys A6 because the decision to lease and then buy was a reasonable one in the circumstances. 72/ The Panel also finds that the cost of purchasing, installing and configuring a replacement Unisys A9 in August 1993 would have exceeded the costs incurred by purchasing, installing and configuring the IBM AS/400-F35 and the two upgrades to it. Furthermore, the work undertaken by the consultants could not have been performed by MEW's pre-invasion staff.

305. The Panel therefore recommends that compensation be awarded for the costs set out at paragraph 303 above, with adjustments for enhancement, saved expenses and insufficient evidence.

306. The Panel notes that MEW's claim makes an allowance for depreciation of the computer equipment and peripherals, based on its estimate of the expected useful life and age of each item. The Panel finds that such a depreciation adjustment is required, but MEW overestimated the expected useful life of the lost Unisys A9. Further, account should be taken of the benefit MEW received from the use of the temporary Unisys A6 pending the purchase of a permanent replacement for the lost Unisys A9. The cumulative effect of all the Panel's adjustments, including that referred to above for enhancement, is that there is a reduction in the depreciation adjustment applied by MEW.

307. Two further elements of the claim for the lost computer centre comprise the costs of consultants employed to:

(a) restore the computer system that manages MEW's stock; and

(b) undertake a post-liberation stock check.

308. The Panel recommends that compensation be awarded for the cost of restoring the computer system that manages MEW's stock because the destruction of the system was a direct result of Iraq's invasion and occupation of Kuwait and the restoration work could not have been performed by MEW's pre-invasion staff. However, an adjustment should be made for insufficient evidence.

309. The Panel recommends that no compensation be awarded for the cost of the post-liberation stock check because the work would have been necessary in the absence of Iraq's invasion and occupation of Kuwait and, in any event, could have been performed by MEW's existing staff.

310. The amounts claimed for the remainder of MEW's claim under this loss type, being for office equipment and furniture, fall below the level of materiality adopted by the Panel. The Panel finds that adjustments to the claim for office equipment and furniture should be made for inadequate accounting for depreciation and insufficient evidence.

311. In light of the above, the Panel recommends compensation in the amount of US$615,000 out of the US$2,113,620 claimed.

## H. Ministry of Information

### Government Claim No. 16, UNCC Claim No. 5000114

Table 8. Summary Table for Ministry of Information

| Loss type/Loss element | Amount claimed US$ | Amount recommended US$ | Paragraph references |
|---|---|---|---|
| Tangible property | | | |
| a) Dar al-Athar al-Islamiyya collection | 60,206,952 | 20,235,000 | 312-324 |
| Other losses | | | |
| a) Costs to recover the Dar al-Athar collection from Iraq | 656,862 | 439,000 | 325-327 |
| b) Costs to value the Dar al-Athar collection | 172,793 | 96,000 | 328-333 |
| Sub-total | 829,655 | 535,000 | |
| Total | 61,036,607 | 20,770,000 | |
| Interest | 9,699,920 | | |

### 1. Other tangible property - US$60,206,952

#### (a) Dar al-Athar al-Islamiyya collection - US$60,206,952 73/

Emeralds - US$53,500,000
Other works of art - US$6,706,952

312. The Ministry of Information ("MoInf") is responsible, amongst other things, for the Kuwait National Museum.

313. At the time of Iraq's invasion and occupation of Kuwait, the Kuwait National Museum was exhibiting the Dar al-Athar al-Islamiyya collection (the "Collection") pursuant to a loan agreement with the private owners of the Collection. 74/ The majority of the Collection was moved to Iraq during Iraq's occupation of Kuwait. Some of the pieces that remained in Kuwait were destroyed by fire.

314. The majority of the Collection was returned after liberation to Kuwait pursuant to UNROP. 75/ However, a number of the pieces returned had been damaged during their transport to, and storage in, Iraq. Furthermore, some pieces in the Collection were never recovered and others were destroyed in the fire mentioned at paragraph 313 above.

315. The loan agreement between MoInf and the private owners of the Collection provided that MoInf was liable for damage to the Collection, including damage from looting, confiscation, fire and war. A court in

Kuwait has found MoInf liable under the loan agreement for the losses. 76/ The Panel therefore finds that, although MoInf is not the owner of the Collection, it has standing to bring this claim.

316. The claim comprises US$53,500,000 for the loss of three emeralds and US$6,706,952 for the loss of, and damage to, other works of art.

317. MoInf has calculated the value of those pieces of the Collection that were lost by reference to its estimate of the price that would be paid by a buyer at an auction (the "buyer's price"). While the Panel agrees that the value should be measured by reference to auction prices, it notes that the price paid by a buyer at such an auction is always in excess of the amount eventually received by the seller (the "seller's price"). 77/ The Panel finds that the valuation of the lost pieces should be by reference to the seller's, rather than the buyer's, price. 78/

318. MoInf supported its claim for the loss of the three emeralds with two expert opinions, each of which considered the buyer's price of the emeralds, by comparing them with other emeralds sold at public auction in recent years. The Panel commissioned its own expert opinion on the value of the emeralds, which applied a similar valuation methodology 79/ and which concluded that MoInf's claim significantly overstated their value. Having considered all of the opinions before it, the Panel finds that MoInf's claim is overstated. The Panel has therefore made adjustments to correct that overstatement and for insufficient evidence and recommends compensation in the amount of US$16,700,000 out of the US$53,500,000 claimed in respect of the lost emeralds.

319. MoInf claims the cost of the repair and the decrease in the value of the other works of art that were returned in a damaged condition. This decrease in value was measured as the estimated pre-invasion buyer's price minus the estimated buyer's price after repair.

320. While the Panel agrees that MoInf should be awarded compensation for both the costs of repair and the decrease in value, it notes that the pieces returned in a damaged condition are being repaired and will remain part of the Collection. As such, the Panel finds that the decrease in value should be measured by reference to the seller's, rather than the buyer's, price.

321. For each piece returned in a damaged condition, the Panel considered whether the repairs undertaken, or planned to be undertaken, were economic in the sense that they resulted, or would result, in an increase in the value of the piece (using the seller's price) at least equal to the repair costs. The Panel finds that uneconomic repairs are only justifiable where

the piece was so unique that it could not be replaced. The Panel finds that none of the items in the Collection was so unique.

322. In the case of uneconomic repairs to items that were not unique, the duty of mitigation would require MoInf to purchase a replacement item, provided that the cost of replacing the item (using the buyer's price) is less than the sum of the cost of repair and the decrease in value (using the seller's price). The Panel has therefore made adjustments where uneconomic repairs have been undertaken or are planned to be undertaken equal to the difference, if any, between the sum of the cost of repair and the decrease in value (using the seller's price) and the cost of replacing the item (using the buyer's price).

323. In its supplemental submission of claim, MoInf disclosed that a dagger included within the claim had been recovered when presented for sale at Sotheby's in 1997. The Panel has therefore made an adjustment equal to the amount claimed for this dagger. The Panel finds that an adjustment should also be made for an overstatement in the time MoInf estimated would be required to re-catalogue and re-arrange a large number of books that were returned by Iraq.

324. In light of the above, and an adjustment for insufficient evidence, the Panel recommends compensation in the amount of US$3,535,000 out of the US$6,706,952 claimed in respect of the other works of art.

### 2. Other losses - US$829,655

#### (a) Costs to recover the Dar al-Athar collection from Iraq - US$656,862

325. The Panel recommends that compensation be awarded for the reasonable cost of retrieving pieces of the Collection and other pieces removed from the Kuwait National Museum, because such retrieval was required as a direct result of the transfer of the pieces to Iraq. 80/ Furthermore, the retrieval acted to mitigate the losses from the Kuwait National Museum. 81/ The Panel finds that the time spent on the retrieval of the pieces was reasonable.

326. The retrieval team was not selected by a competitive procurement procedure. The Panel has made an adjustment for the resultant excess costs incurred for the packing of the pieces and their transport to Kuwait. The Panel has also made an adjustment to reflect the fact that the claim includes a "contingency item" to which no expenditure is allocated.

327. In light of the above, the Panel recommends compensation in the amount of US$439,000 out of the US$656,862 claimed.

(b) Costs to value the Dar al-Athar collection - US$172,793 82/

328. MoInf seeks compensation for the costs of preparing a report on the damage to the Collection, producing an inventory of the Collection for the purposes of the retrieval of the pieces from Iraq, and producing a report on the retrieval of the pieces from Iraq.

329. The report on the damage to the Collection appears to have been produced for the private owners of the Collection for the purpose of their claim against MoInf for the damage to the Collection. Further, the court decision discussed at paragraph 315 above awarded the amount claimed for this loss element against MoInf. The Panel therefore recommends that compensation be awarded for the cost of producing this report.

330. The Panel finds that an inventory for the purposes of the retrieval of the pieces from Iraq was required because the original records of the Collection were missing as a direct result of Iraq's invasion and occupation of Kuwait. Accordingly, the Panel recommends that compensation be awarded for the costs of producing the inventory.

331. The Panel also finds that producing the report on the retrieval of the pieces from Iraq was an integral part of the mission to retrieve them, and therefore recommends that compensation be awarded for the costs of producing the report.

332. Under an agreement in force before Iraq's invasion and occupation of Kuwait and which continued after liberation, MoInf paid a monthly management fee to a company for services in relation to the Collection. Some of the costs claimed for the preparation of the report on the damage to the Collection and the report on the retrieval of the pieces from Iraq were amounts paid under this agreement and thus would have been incurred in the absence of Iraq's invasion and occupation of Kuwait. There is no indication that MoInf paid any additional fees to the company to compensate for the time spent by the company on the two reports. The Panel therefore finds that an adjustment should be made equal to the amount of the losses claimed that would have been incurred in any event.

333. In light of the above, the Panel recommends compensation in the amount of US$96,000 out of the US$172,793 claimed.

## I. Ministry of Public Works (Mishref Neighborhood Center)

Government Claim No. 17, UNCC Claim No. 5000115

Table 9. Summary Table for Ministry of Public Works (Mishref Neighborhood Center)

| Loss type/Loss element | Amount claimed US$ | Amount recommended US$ | Paragraph references |
|---|---|---|---|
| Contract | | | |
| a) Mishref neighborhood center | 4,380,588 | 3,213,000 | 336-337 |
| b) Kuwait University | 7,660,183 | 2,582,000 | 338-339 |
| Sub-total | 12,040,771 | 5,795,000 | |
| Real property | | | |
| a) Old Sief Palace | 5,952,505 | 2,321,000 | 340-342 |
| Other tangible property | | | |
| a) Government Testing Center | 9,560,898 | 3,216,000 | 343-346 |
| b) Computer department | 8,115,250 | 1,074,000 | 347-350 |
| c) General and technical stores | 3,471,355 | 1,674,000 | 351-353 |
| d) Office furniture and equipment | 2,033,852 | 968,000 | 354-356 |
| e) Heavy equipment | 3,765,173 | 1,339,000 | 357-359 |
| Sub-total | 26,946,528 | 8,271,000 | |
| Payment or relief to others | | | |
| a) Payment of salaries and bonuses | 23,609,806 | 8,670,000 | 360-365 |
| Business transaction or course of dealing | | | |
| a) Government Testing Center lost revenue | 7,005,500 | 0 | 366-371 |
| Other losses | | | |
| a) Government Testing Center lost research | 3,891,254 | 430,000 | 372-373 |
| Total | 79,446,364 | 25,487,000 | |
| Interest | 12,625,440 | | |

### 1. Contract - US$12,040,771

#### (a) Introduction

334. In respect of the projects set out below, MPW claims compensation for losses sustained due to the interruption of contracts that were in existence on 2 August 1990. Such losses included the costs of site restoration and the additional costs of completing the contracts. 83/ In the latter case, MPW asserts that the additional costs are to cover increased costs in the post-liberation period.

335. The Panel, continuing its approach set out at paragraph 63 of the First "F3" Report (repeated as paragraph 63 of the annex), finds that the

losses claimed are compensable in so far as they are attributable to the factors set out in that paragraph, namely, site restoration costs, additional transportation costs and additional insurance costs. The evidence shows that part only of the losses claimed is attributable to these factors.

### (b) Mishref neighborhood center - US$4,380,588

336. MPW asserts that two contracts, in relation to the construction of a number of buildings at Mishref, were interrupted by Iraq's invasion and occupation of Kuwait. The Panel has calculated the amount of the losses claimed that is attributable to the factors set out at paragraph 335 above.

337. In light of the above, the Panel recommends compensation in the amount of US$3,213,000 out of the US$4,380,588 claimed.

### (c) Kuwait University - US$7,660,183

338. MPW asserts that five contracts, in relation to the construction of four buildings for Kuwait University, were interrupted by Iraq's invasion and occupation of Kuwait. The Panel has calculated the amount of the losses claimed that is attributable to the factors set out at paragraph 335 above.

339. In light of the above, the Panel recommends compensation in the amount of US$2,582,000 out of the US$7,660,183 claimed.

## 2. Real property - US$5,952,505

### (a) Old Sief Palace - US$5,952,505

340. MPW seeks compensation for damage to Old Sief Palace, the oldest building in Kuwait. After liberation, KERO performed some emergency repairs to the palace. At the time it submitted its claim, MPW had not started the permanent repairs to the palace, and therefore claims its estimate of those repair costs.

341. The Panel finds that an adjustment for inadequate accounting for depreciation should be made to the costs of repair claimed and, recognising the building's great historical significance to Kuwait, has adopted a useful life of 350 years for the relevant calculation. The Panel finds that further adjustments should be made for saved expenses and insufficient evidence.

342. In light of the above, the Panel recommends compensation in the amount of US$2,321,000 out of the US$5,952,505 claimed.

### 3. Other tangible property - US$26,946,528

#### (a) Government Testing Center - US$9,560,898

343. MPW seeks compensation for the loss of laboratory supplies, glassware, chemicals and sophisticated technical equipment (including fourteen drilling rigs). Before Iraq's invasion and occupation of Kuwait, these items were used to test building materials and soil samples from construction sites.

344. At the time MPW filed its claim, it had replaced only two of the lost drilling rigs. It therefore valued its loss on the basis of the unit price paid for the two replacements. MPW replaced two more of the lost drilling rigs in 1995 and a further two in 1996. The Panel finds that a lower unit price would have been obtained had MPW placed a single order for the replacement drilling rigs and has made an appropriate adjustment. 84/

345. The Panel also finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

346. In light of the above, the Panel recommends compensation in the amount of US$3,216,000 out of the US$9,560,898 claimed.

#### (b) Computer department - US$8,115,250

347. MPW seeks compensation for the loss of computer equipment and technical documents.

348. MPW asserts that the loss of the technical documents means that it will have to re-develop many of its computer systems. It therefore claims the historic cost of the labour used to initially develop those systems. As set out at paragraphs 23 to 28 above, the Panel recommends that compensation be awarded for such lost information. However, the Panel finds that an adjustment should be made for economies of re-creation.

349. The Panel finds that adjustments should also be made for enhancement, inadequate accounting for depreciation, saved expenses and insufficient evidence.

350. In light of the above, the Panel recommends compensation in the amount of US$1,074,000 out of the US$8,115,250 claimed.

### (c) General and technical stores - US$3,471,355

351. MPW seeks compensation for the loss of spare parts, office supplies and construction materials from five storage locations.

352. The Panel finds that an adjustment should be made to reflect the shrinkage (that is, pilferage or erroneous bookkeeping) and obsolescence that would have occurred in the stores' contents in the absence of Iraq's invasion and occupation of Kuwait. Adjustments should also be made for saved expenses and insufficient evidence.

353. Accordingly, the Panel recommends compensation in the amount of US$1,674,000 out of the US$3,471,355 claimed.

### (d) Office furniture and equipment - US$2,033,852

354. MPW seeks compensation for the loss of its office furniture and equipment.

355. The Panel finds that adjustments should be made for saved expenses and insufficient evidence.

356. Accordingly, the Panel recommends compensation in the amount of US$968,000 out of the US$2,033,852 claimed.

### (e) Heavy equipment - US$3,765,173

357. MPW seeks compensation for the loss of cranes, bulldozers, trucks, graders, and other heavy equipment. 85/

358. MPW valued its loss by reference to its estimate of the replacement cost of each piece of heavy equipment that was lost. It then applied a depreciation factor to each of these values to reflect that the piece of heavy equipment in question was not new at the time of Iraq's invasion and occupation of Kuwait. While the Panel agrees with this method of valuation, it has made adjustments to reflect some errors in MPW's estimate of the replacement costs and the subsequent effect of these errors on MPW's depreciation adjustments. The Panel finds that further adjustments should be made for incorrect valuation of KERP assets, saved expenses and insufficient evidence.

359. In light of the above, the Panel recommends compensation in the amount of US$1,339,000 out of the US$3,765,173 claimed.

### 4. Payment or relief to others - US$23,609,806

#### (a) Payment of salaries and bonuses - US$23,609,806

360. MPW seeks compensation in the amount of US$23,431,908 for relief paid to employees.

361. The evidence shows that the amount claimed is based upon the employees' salaries after deduction of the social security contribution.

362. As set out at paragraph 36 of the First "F3" Report, and subject to the percentage adjustment set out at paragrapn 48 thereof, the Panel accepts the compensability of such relief paid to employees.

363. MPW also seeks compensation in the amount of US$177,898 for bonuses paid to 309 employees for their work on Kuwait's sewerage system during Iraq's occupation of Kuwait. The Panel finds that the decision to make the payments was made well after liberation pursuant to a general power granted by a 1977 Ministerial Order. The payments were therefore not a direct result of Iraq's invasion and occupation of Kuwait and the Panel recommends that no compensation be awarded for them.

364. The Panel also finds that an adjustment should be made for insufficient evidence.

365. In light of the above, the Panel recommends compensation in the amount of US$8,670,000 out of the US$23,609,806 claimed.

### 5. Business transaction or course of dealing - US$7,005,500

#### (a) Government Testing Center lost revenue - US$7,005,500

366. Prior to Iraq's invasion and occupation of Kuwait, the Government Testing Center earned revenue from companies which paid fees for the testing of building materials and soil samples. MPW claims the loss of this revenue for the period 1 June 1991 to 30 June 1998, 86/ calculated as the difference between its estimate of the revenue that would have been earned in the absence of Iraq's invasion and occupation of Kuwait and the revenue in fact earned (although it should be noted that, for fiscal years 1994 to 1998 inclusive, MPW's claim relies on estimates of the revenue to be earned).

367. The Panel finds that the loss of revenue is compensable for the period that the revenue was affected as a direct result of Iraq's invasion and occupation of Kuwait, subject to deductions for exceptional post-

liberation revenue, for revenue that would have been paid by other Government departments and for saved expenses. 87/

368. The Panel finds that the revenue was affected as a direct result of Iraq's invasion and occupation of Kuwait until 30 June 1995 and has made an appropriate adjustment to the amount claimed. An adjustment is also required to reflect the difference between MPW's estimate of the revenue it would earn for fiscal years 1994 and 1995 and the revenue that was, in fact, earned.

369. The Panel has also made adjustments to reflect the revenue that would have been paid by other Government departments and the fact that some of the work lost by MPW after liberation was performed by Kuwait University, another Government department.

370. Finally, the Panel sought information from MPW as to the costs involved in the generation of the Government Testing Center revenue. This information disclosed that the expenses that would have been incurred in earning the lost revenue for the period 2 August 1990 until 30 June 1995 exceeded that lost revenue.

371. Accordingly, the Panel does not recommend any compensation for this loss type.

### 6. Other losses - US$3,891,254

#### (a) Government Testing Center lost research - US$3,891,254

372. MPW asserts that vandalism at the Government Testing Center resulted in the loss of ten years' worth of research into the effects of Kuwait's extreme climate on building materials. As set out at paragraphs 23 to 28 above, the Panel recommends that compensation be awarded for such lost information. However, the Panel finds that adjustments should be made to reflect the fact that a large percentage of the lost research was, at the time of Iraq's invasion and occupation of Kuwait, readily available in technical publications and has made an adjustment for economies of re-creation in this regard. The Panel finds that an adjustment should also be made for insufficient evidence.

373. In light of the above, the Panel recommends compensation in the amount of US$430,000 out of the US$3,891,254 claimed.

### J. Ministry of Defense (Naval Base)

Government Claim No. 22, UNCC Claim No. 5000139

Table 10. Summary Table for Ministry of Defense (Naval Base)

| Loss type/Loss element | Amount claimed US$ | Amount recommended US$ | Paragraph references |
|---|---|---|---|
| Real property | 63,453,966 | 39,946,000 | 374-380 |
| Total | 63,453,966 | 39,946,000 | |
| Interest | 10,083,880 | | |

#### 1. Real property - US$63,453,966 88/

374. The Ministry of Defense ("MoD") is, amongst other things, responsible for the Base 89/ and related naval facilities. MoD asserts that, prior to Iraq's invasion and occupation of Kuwait, the Base consisted of approximately 90 on-shore buildings, which included naval headquarters, marine works, warehouses and storage facilities. An ammunition and missile storage depot ("Ammunition Depot"), which included 31 "igloos" for the storage of ammunition and missiles, is located some five kilometres from the Base. The marine works consisted of vessel repair facilities and an artificial harbour. The vessel repair facilities included a ship lift for lifting vessels out of the water for repairs, a 10-ton capacity crane for transferring cargo to and from vessels, and a system of carriages on rails for transporting vessels to and from repair sites. The artificial harbour facilities included a fixed jetty and one floating jetty. In addition, MoD also maintained fixed jetties on various islands in the Persian Gulf.

375. MoD asserts that during the occupation period the Iraqi forces occupied the Base and Ammunition Depot. As a result, it claims, buildings were damaged, their contents removed 90/ and explosives were detonated around the 10-ton capacity crane, causing it to collapse onto a jetty. MoD further claims that direct missile strikes from the Allied Coalition Forces also seriously damaged or destroyed the Ammunition Depot, jetties, a ship lift and various on-shore buildings at the Base.

376. In a technical mission to Kuwait undertaken in June 1999, certain of the on-shore facilities at the Base were inspected on the Panel's behalf.

377. MOD entered into four contracts for the repair and replacement of the on-shore buildings and marine facilities at the Base, the Ammunition Depot and certain of the jetties, three of which were awarded using MoD's Military Engineering Projects Department's established contracting procedures. 91/ The Panel finds that the costs incurred in respect of the fourth contract were reasonable and the absence of such procedures did not

lead to increased costs. Accordingly, the Panel does not recommend that an adjustment be made in this regard.

378. The Panel finds that MoD has saved maintenance expenses from 2 August 1990 until the dates upon which the relevant repair or replacement was completed 92/ or the dates upon which it would be reasonable, in all the circumstances, to expect the relevant repair or replacement to have taken place.

379. The Panel finds that further adjustments should be made for inadequate accounting for depreciation, overstatement and insufficient evidence.

380. In light of the above, the Panel recommends compensation in the amount of US$39,946,000 out of the US$63,453,966 claimed.

## K. Kuwait University

### Government Claim No. 23, UNCC Claim No. 5000140

Table 11. Summary Table for Kuwait University

| Loss type/Loss element | Amount claimed US$ | Amount recommended US$ | Paragraph references |
|---|---|---|---|
| Other tangible property | 224,753,561 | 107,930,000 | 381-386 |
| Payment or relief to others | | | |
| (a) Relief paid to employees | 36,272,151 | 12,616,000 | 387-390 |
| (b) Advance lease payments | 3,353,891 | 3,270,000 | 391-394 |
| Sub-total | 39,626,042 | 15,886,000 | |
| Total | 264,379,603 | 123,816,000 | |
| Interest | 42,015,200 | | |

### 1. Other tangible property - US$224,753,561

381. Kuwait University ("KU") is Kuwait's national university. KU claims that Iraqi troops occupied its properties, and that, as a result, its tangible assets were lost or destroyed together with the majority of its pre-invasion inventory records. [93] KU claims that the assets lost include furniture, office equipment, office stationery, computers and accessories, laboratory equipment, its library collection, kitchen tools and various miscellaneous items.

382. In its response to Procedural Order 1, Iraq asserted that complete inventories and records did exist which show the extent of supplies and equipment at KU as at 2 August 1990. The Panel requested Iraq to produce the inventories, and Iraq produced part of an inventory of the College of Science at KU in response. KU used a variety of methods of valuation including estimated replacement cost, depending upon the availability of information, which methods the Panel finds were reasonable in the circumstances. However, the Panel finds that the measure of inflation applied in estimating replacement costs was overstated and has made an adjustment to correct the overstatement.

383. The Panel notes that although replacement purchases were not always made using competitive procurement procedures, the costs incurred were reasonable and the absence of such procedures did not lead to increased costs.

384. The Panel finds that adjustments should be made for enhancement in respect of the amounts claimed for computers and laboratory equipment, and for inadequate accounting for depreciation in respect of the amounts

claimed for office stationery, the library collection, computers and laboratory equipment.

385. The Panel finds that further adjustments should be made for saved expenses and for insufficient evidence.

386. In light of the above, the Panel recommends compensation in the amount of US$107,930,000 out of the US$224,753,561 claimed.

### 2. Payment or relief to others - US$39,626,042

#### (a) Relief paid to employees and social security - US$36,272,151

387. KU seeks compensation in the amount of US$36,272,151 for relief paid to employees, to include social security contributions of US$4,731,150 paid by KU in respect of its employees.

388. The Panel finds, in accordance with paragraph 41 of the First "F3" Report (repeated as paragraph 41 of the annex), that sums paid by way of social security contributions are not compensable.

389. As set out at paragraph 36 of the First "F3" Report, and subject to the percentage adjustment set out at paragraph 48 thereof, the Panel accepts the compensability of relief paid to employees (excluding the sums paid by way of social security contributions).

390. In light of the above, the Panel recommends compensation in the amount of US$12,616,000 out of the US$36,272,151 claimed.

#### (b) Advance lease payments - US$3,353,891

391. KU seeks compensation for pre-paid rent on housing that was rented for employees prior to Iraq's invasion and occupation of Kuwait. KU seeks compensation for the amount of pre-paid rent referable to the period 2 August 1990 to 31 December 1990, save for one short lease, for which it claims the pre-paid rent referable to the period 2 August 1990 to 30 September 1990.

392. The Panel recommends that, in accordance with the principles set out at paragraph 84 of the First "F3" Report, compensation be awarded for that portion of the pre-paid rent referable to the period that KU was unable to use the premises as a direct result of Iraq's invasion and occupation of Kuwait. The Panel finds that this period is 2 August 1990 to 31 December 1990, save for the short lease for which the period is 2 August 1990 to 30 September 1990.

393. The Panel finds that an adjustment should be made for insufficient evidence.

394. In light of the above, the Panel recommends compensation in the amount of US$3,270,000 out of the US$3,353,891 claimed.

## L. Ministry of Oil

### Government Claim No. 27, UNCC Claim No. 5000144

Table 12. Summary Table for Ministry of Oil

| Loss type/Loss element | Amount claimed US$ | Amount recommended US$ | Paragraph references |
|---|---|---|---|
| Other tangible property | 970,814 | 530,000 | 395-398 |
| Payment or relief to others | 4,066,515 | 1,620,000 | 399-402 |
| Other losses | | | |
| a) Lost research data | 2,515,531 | 510,000 | 403-409 |
| b) Study regarding lost oil income | 330,048 | 330,048 | 410-412 |
| Sub-total | 2,845,579 | 840,048 | |
| Total | 7,882,908 | 2,990,048 | |
| Interest | 1,252,800 | | |

### 1. Other tangible property - US$970,814 94/

395. The Ministry of Oil ("MoO"), on behalf of the State of Kuwait, supervises Kuwait's oil industry in its exploration, drilling, refining and production operations, its export of oil and petroleum products and its conservation of Kuwait's oil resources. MoO is also involved in setting Kuwait's oil production levels and approves the drilling of oil wells at particular sites.

396. MoO seeks compensation for the loss of office furniture and fixtures, office equipment, and reference and technical books and periodicals. The Panel notes, following Iraq's response to Procedural Order 1, that various items were returned through UNROP, but finds that MoO has not made a claim for any of the items concerned.

397. The Panel finds that adjustments should be made for inadequate accounting for depreciation, overstatement, saved expenses and insufficient evidence.

398. In light of the above, the Panel recommends compensation in the amount of US$530,000 out of the US$970,814 claimed.

### 2. Payment or relief to others - US$4,066,515

#### (a) Relief paid to employees - US$4,066,515

399. MoO seeks compensation in the amount of US$4,066,515 for relief paid to employees.

400. The response of the Government to the Panel's questions regarding the Social Security Fund 95/ states that the amount claimed is based upon the employees' salaries after deduction of the social security contribution. The Panel accepts this statement.

401. As set out at paragraph 36 of the First "F3" Report, and subject to the percentage adjustment set out at paragraph 48 thereof (repeated as paragraphs 36 and 48 of the annex, respectively), the Panel accepts the compensability of such relief paid to employees. 96/

402. In light of the above, the Panel recommends compensation in the amount of US$1,620,000 out of the US$4,066,515 claimed.

### 3. Other losses

#### (a) Lost research data - US$2,515,531

403. MoO claims that, starting in 1964, it began commissioning a series of oil reserve and geological studies to assist it in managing Kuwait's oil resources and that four such studies commissioned between 1974 and 1980 were lost or destroyed during Iraq's invasion and occupation of Kuwait. MoO asserts that it could not obtain copies of the studies after liberation from any other source. (The consultants who originally produced the studies were not allowed to retain copies after completion of their contract.) The Panel accepts MoO's assertions.

404. The Panel finds, in accordance with the principles set out at paragraphs 23 to 28 above, that the loss of the studies is compensable, subject to verification and valuation.

405. MoO claims that, despite the age of the studies, the information in them was nonetheless used on a regular basis, in monitoring Kuwait's oil production, setting oil production levels, and deciding whether to approve the drilling of oil wells at various sites. In addition, MoO claims that the studies provided an historical record of Kuwait's oil resources and geological formations.

406. In order to ascertain what would have been the continuing value of the lost reports to MoO beyond the date of Iraq's invasion and occupation of Kuwait, the Panel issued Procedural Order 11 in September 1999 seeking details, amongst other matters, of the purposes for which the studies had originally been commissioned and whether those purposes had been fulfilled by the date of Iraq's invasion and occupation of Kuwait. In light of the responses received, the Panel finds that MoO had received the main benefit of the studies prior to Iraq's invasion and occupation of Kuwait. However, the Panel finds that the studies still retained a secondary use for the monitoring and setting of production levels, and accordingly recommends that compensation be awarded for the loss of the corresponding benefit after Iraq's invasion and occupation of Kuwait and for their archival value.

407. The Panel finds that historic cost, adjusted for inflation, is an appropriate measure of loss sustained, as it is impossible to reproduce or replace the studies. However, the Panel has adjusted the amount claimed so as to reflect the benefits derived by MoO from the studies prior to Iraq's invasion and occupation of Kuwait.

408. The Panel finds that further adjustments should be made for overstatement and insufficient evidence.

409. In light of the above, the Panel recommends compensation in the amount of US$510,000 out of the US$2,515,531 claimed.

### (b) Study regarding lost oil income - US$330,048 97/

410. MoO also claims for the cost incurred in commissioning external consultants to conduct a post-liberation study to analyse Kuwait's loss of oil revenues resulting from Iraq's invasion and occupation of Kuwait.

411. The Panel finds that the study's primary purpose was loss or damage assessment (and not for claims preparation purposes), and therefore that the reasonable costs incurred in retaining the consultants are a direct loss.

412. In light of the above, the Panel recommends compensation in full in the amount of US$330,048.

## M. Kuwait Municipality

### Government Claim No. 30, UNCC Claim No. 5000147

Table 13. Summary Table for Kuwait Municipality

| Loss type/Loss element | Amount claimed US$ | Amount recommended US$ | Paragraph references |
|---|---|---|---|
| Public service expenditures | | | |
| a) Cleaning contracts | 89,717,109 | 66,917,000 | 413-417 |
| b) Removal of damaged vehicles | 1,798,058 | 629,000 | 418-421 |
| c) Repair and replacement of traffic signs | 1,490,539 | 364,000 | 422-424 |
| Sub-total | 93,005,706 | 67,910,000 | |
| Payment or relief to others | 81,173,333 | 30,034,000 | 425-429 |
| Real property | 6,427,598 | 831,000 | 430-433 |
| Other tangible property | 13,226,204 | 5,816,000 | 434-438 |
| Income producing property | 1,302,306 | 0 | 439-441 |
| Contract | 1,324,124 | 611,000 | 444-448 |
| Total | 196,459,271 | 105,202,000 | |
| Interest | 31,221,400 | | |

### 1. Public service expenditures - US$93,005,706

#### (a) Cleaning contracts - US$89,717,109

413. Kuwait Municipality (the "Municipality") provides municipal services to, and plans for the orderly growth of, Kuwait City. During 1991, the Municipality entered into thirteen contracts to clean Kuwait City and remove rubbish that had accumulated during Iraq's invasion and occupation of Kuwait.

414. The Panel finds that the accumulation of rubbish and the resultant need to engage cleaning contractors were a direct result of Iraq's invasion and occupation of Kuwait.

415. The Panel has considered the method adopted by the Municipality in awarding these contracts. It is not clear from the evidence and information before the Panel whether any of the contracts was awarded using competitive procurement procedures. The Municipality also incurred higher charges for the services provided pursuant to the thirteen contracts than it had paid for equivalent cleaning services before Iraq's invasion and occupation of Kuwait. This is because the contracts were generally negotiated and awarded before liberation, without precise knowledge of the services that would be required. Finally, based on estimates of the work required, and in order to justify the costs of bringing in personnel and

equipment, all of the contracts were awarded for a term of one year. The Panel finds that, given the risk to public health from the accumulated rubbish, the contracting procedure adopted was reasonable in all the circumstances. 98/

416. The Panel finds, however, that adjustments should be made for saved expenses (being the amount that the Municipality would have incurred on cleaning costs for the relevant period in the absence of Iraq's invasion and occupation of Kuwait) and insufficient evidence.

417. Accordingly, the Panel recommends compensation in the amount of US$66,917,000 out of the US$89,717,109 claimed.

### (b) Removal of damaged vehicles - US$1,798,058

418. After liberation, the Municipality engaged a contractor to collect the thousands of damaged and/or abandoned vehicles on the streets of Kuwait City and convert them into scrap metal. The Municipality claims the difference between what it paid the contractor and what it received for selling the scrap metal.

419. The Panel finds that the decision to engage a contractor for the removal of such vehicles was a direct result of Iraq's invasion and occupation of Kuwait.

420. Pursuant to an order of the Council of Ministers (made in 1988), the Government was authorised to negotiate with one company alone for the sale of salvage materials. Although the contract was therefore not awarded using competitive procurement procedures, the Panel finds that the cost incurred was reasonable and would not have been reduced had competitive procurement procedures been adopted. However, an adjustment should be made for insufficient evidence.

421. Accordingly, the Panel recommends compensation in the amount of US$629,000 out of the US$1,798,058 claimed.

### (c) Repair and replacement of traffic signs - US$1,490,539

422. The Municipality asserts that, after liberation, it entered into two contracts for the repair, replacement and cleaning of traffic signs that were damaged during Iraq's invasion and occupation of Kuwait.

423. The Panel finds that the damage to the signs and resultant need to engage a contractor to repair, replace or clean them were a direct result of Iraq's invasion and occupation of Kuwait. However, adjustments should be made for saved expenses and insufficient evidence.

424. Accordingly, the Panel recommends compensation in the amount of US$364,000 out of the US$1,490,539 claimed.

### 2. Payment or relief to others - US$81,173,333

#### (a) Relief paid to employees - US$81,173,333

425. The Municipality seeks compensation in the amount of US$81,173,333 for relief paid to employees.

426. The response of the Government to the Panel's questions regarding the Social Security Fund 99/ states that the amount claimed is based upon the employees' salaries after deduction of the social security contribution. The Panel accepts this statement.

427. As set out at paragraph 36 of the First "F3" Report, and subject to the percentage adjustment set out at paragraph 48 thereof (repeated as paragraphs 36 and 48 of the annex, respectively), the Panel accepts the compensability of such relief paid to employees.

428. The Panel also finds that an adjustment should be made for insufficient evidence.

429. In light of the above, the Panel recommends compensation in the amount of US$30,034,000 out of the US$81,173,333 claimed.

### 3. Real property - US$6,427,598

430. The real property losses of the Municipality arise out of damage to, and destruction of, three facilities on Failaka Island and various facilities on the mainland.

431. The facilities on Failaka Island will not be repaired or replaced. Nevertheless, on the basis set out at paragraph 66 of the First "F3" Report, the Panel recommends that compensation be awarded for the damage to them and that the compensation be measured by the cost of reconstruction or repair measured at such time as it would be reasonable, in all the circumstances, to expect the reconstruction or repair to have taken place. However, the Panel finds that an adjustment to the claim for the facilities on Failaka Island should be made for insufficient evidence.

432. As for the facilities on the mainland, the Panel finds that the Municipality's savings in maintenance expenditure during the occupation and emergency periods exceed its claim for the facilities. As a result, the Panel does not recommend any compensation for the facilities on the mainland.

433. Accordingly, the Panel recommends compensation in the amount of US$831,000 out of the US$6,427,598 claimed.

### 4. Other tangible property - US$13,226,204

Heavy equipment - US$8,957,283

Vehicles - (US$39,461) 100/

Computers - US$2,346,546

Office equipment and furniture - US$1,961,836 101/

434. The Municipality seeks compensation for loss of the above items of tangible property.

435. Some of the lost heavy equipment, office equipment and furniture will not be replaced because outside contractors are now hired to undertake most of the work previously performed with the aid of the heavy equipment lost and because the Municipality has fewer employees than before Iraq's invasion and occupation of Kuwait. Nevertheless, on the basis set out at paragraph 66 of the First "F3" Report, the Panel recommends that compensation be awarded for the loss of these assets.

436. The claim for the lost computers includes an amount for training on, and technical support for, the post-liberation replacements. The Panel finds that only insignificant technical advancements had been made since the initial purchase of the computers and therefore does not recommend any compensation for the training and technical support.

437. The Panel also finds that adjustments should be made for enhancement, inadequate accounting for depreciation, saved expenses, incorrect valuation of KERP assets and insufficient evidence.

438. Accordingly, the Panel recommends compensation in the amount of US$5,816,000 out of the US$13,226,204 claimed.

### 5. Income producing property - US$1,302,306

#### (a) Slaughterhouse rental income - US$1,302,306

439. Prior to Iraq's invasion and occupation of Kuwait, the Municipality earned revenue from the rental of five slaughterhouses. The Municipality claims that it was unable to collect rent for the occupation and emergency periods because its tenants ceased doing business. 102/

440. The Panel finds that loss of revenue is, in principle, compensable, 103/ subject to deductions for exceptional post-liberation revenue, for

revenue that would have been paid by other Government departments and for saved expenses. 104/ The Panel sought information from the Municipality as to the number of employees involved in the generation of the slaughterhouse revenue. This disclosed that the salary expense not incurred by the Municipality over the occupation and emergency periods exceeded the loss of revenue claimed.

441. Accordingly, the Panel does not recommend any compensation for this loss type.

### 6. Contract - US$1,324,124

#### (a) Introduction

442. The Municipality claims compensation for losses sustained due to the interruption of contracts that were in existence on 2 August 1990. Such losses included the costs of site restoration and the additional costs of completing the contracts. In the latter case, the Municipality asserts that the additional costs are to cover increased costs in the post-liberation period.

443. The Panel, continuing its approach set out at paragraph 63 of the First "F3" Report, finds that the losses claimed are compensable in so far as they are attributable to the factors set out in that paragraph, namely, site restoration costs, additional transportation costs and additional insurance costs. The evidence shows that part only of the losses claimed is attributable to these factors.

#### (b) Contract interruption loss - US$1,324,124 105/

444. At the time of Iraq's invasion and occupation of Kuwait, the Municipality was party to nine construction and maintenance contracts, all of which were interrupted by Iraq's invasion and occupation of Kuwait. Seven of these contracts were resumed after liberation. 106/ The Panel has calculated the amount of the losses claimed in relation to these seven contracts that is attributable to the factors set out at paragraph 443 above.

445. Accordingly, the Panel recommends US$412,000 in respect of the contracts resumed after liberation.

446. The Panel finds that the remaining two contracts were not abandoned as a direct result of Iraq's invasion and occupation of Kuwait. 107/ As set out at paragraph 39 above, the Panel recommends that the appropriate compensation in such a case is the cost of repairing the damage that was a direct result of Iraq's invasion and occupation of Kuwait at such time as

it would be reasonable, in all the circumstances, to expect repair to have taken place (with adjustments, in appropriate cases, for inadequate accounting for depreciation and saved expenses). 108/

447. Accordingly, the Panel recommends US$199,000 for the two contracts abandoned after liberation.

448. In light of the above, the Panel recommends a total of US$611,000 out of the US$1,324,124 claimed.

## N. Ministry of Public Works (Buildings Construction Department)

### Government Claim No. 31, UNCC Claim No. 5000159

Table 14. Summary Table for Ministry of Public Works (Buildings Construction Department)

| Loss type/Loss element | Amount claimed US$ | Amount Recommended US$ | Paragraph references |
|---|---|---|---|
| Contract | | | |
| a) Buildings construction department | 21,895,743 | 8,033,000 | 451-460 |
| b) Local roads construction department | 9,372,359 | 3,501,000 | 461-463 |
| c) Motorways department | 43,099,324 | 18,994,000 | 464-466 |
| d) Sanitation department | 17,315,507 | 0 | 467-469 |
| Sub-total | 91,682,933 | 30,528,000 | |
| Real property | | | |
| a) Buildings construction department | 12,430,834 | 5,918,000 | 470-474 |
| b) Buildings maintenance department | 11,092,052 | 5,095,000 | 475-477 |
| c) Roads maintenance department | 42,336,270 | 18,328,000 | 478-482 |
| d) Bubiyan Bridge | 16,578,936 | 4,741,000 | 483-489 |
| Sub-total | 82,438,092 | 34,082,000 | |
| Other losses | | | |
| a) Sanitation department's lost business records | 2,905,938 | 239,000 | 490-493 |
| Total | 177,026,963 | 64,849,000 | |
| Interest | 28,133,480 | | |

### 1. Contract - US$91,682,933

#### (a) Introduction

449. In respect of the projects set out below, MPW claims compensation for losses sustained due to the interruption of contracts that were in existence on 2 August 1990. Such losses included the costs of site restoration and the additional costs of completing the contracts. 109/ In the latter case, MPW asserts that the additional costs are to cover increased costs in the post-liberation period.

450. The Panel, continuing its approach set out at paragraph 63 of the First "F3" Report (repeated as paragraph 63 of the annex), finds that the losses claimed are compensable in so far as they are attributable to the factors set out in that paragraph, namely, site restoration costs, additional transportation costs and additional insurance costs. The

evidence shows that part only of the losses claimed is attributable to these factors.

(b) Buildings construction department - US$21,895,743

451. MPW asserts that over thirty building construction contracts being supervised by the above-captioned department were interrupted by Iraq's invasion and occupation of Kuwait.

452. A contract for the construction of a fishing port had not been formally concluded at the time of Iraq's invasion and occupation of Kuwait. MPW claims the difference between its estimate of what the contract price would have been if the contract had been finalised and the price paid for the works after liberation. The Panel finds, applying the principles set out at paragraph 153 above, that there is insufficient evidence of consensus as to the essential provisions of this pre-invasion arrangement. It therefore recommends compensation only for that portion of the cost of the post-liberation contract referable to repairing damage that was a direct result of Iraq's invasion and occupation of Kuwait (subject to verification and valuation).

453. Contracts for the following projects have not yet been resumed:

(a) construction of a market;

(b) construction of a fire fighting training school;

(c) construction and maintenance of a musical and theatrical art college; and

(d) expansion of two mosques.

454. The Panel considers these contracts at paragraphs 455 to 460 below.

455. The Panel notes that responsibility for the construction of the market was transferred to Kuwait Municipality and then to a private investor (who has now completed construction). The Panel recommends that no compensation be awarded for the interruption of this contract. MPW has, in fact, saved the cost of not completing the market.

456. The Panel notes that responsibility for the construction of the fire fighting training school has been transferred to Kuwait Municipality and that it is intended for the contract to resume at some stage. The Panel recognises that part of the loss from the interruption of this contract will thus be borne by MPW and part by Kuwait Municipality. However, to require MPW and Kuwait Municipality to each claim for its portion of the

loss would be too technical and rigid an approach, given that both parties are political subdivisions of the Government. 110/ The Panel therefore recommends that compensation be awarded to MPW as set out at paragraph 37 above.

457. In relation to the interrupted contract to construct and maintain the musical and theatrical art college, the Panel finds that MPW intends to resume the contract in the future. The Panel therefore recommends that compensation be awarded in accordance with paragraph 37 above.

458. In relation to the interrupted contract for the expansion of the two mosques, the Panel finds that, after liberation, the expansion of one of the mosques was completed by a private donor. The Panel recommends that no compensation be awarded for the interruption of that portion of the contract. MPW has, in fact, saved the cost of not completing the expansion of the mosque.

459. However, the Panel finds that MPW intends to complete the expansion of the second mosque in the future. The Panel therefore recommends that compensation be awarded as set out at paragraph 37 above for the interruption of that portion of the contract.

460. In light of the above, the Panel recommends compensation in the amount of US$8,033,000 out of the US$21,895,743 claimed.

### (c) Local roads construction department - US$9,372,359

461. MPW asserts that ten road construction contracts being supervised by the above-captioned department were interrupted by Iraq's invasion and occupation of Kuwait. For the nine contracts that have resumed, the Panel has calculated the amount of the losses claimed that is attributable to the factors set out at paragraph 450 above.

462. A contract for the construction of roads on Bubiyan Island has been abandoned by MPW. The Panel finds that MPW has failed to show that the contract was abandoned as a direct result of Iraq's invasion and occupation of Kuwait. The use of the island by only a limited number of MoD employees has not altered as a result of Iraq's invasion and occupation of Kuwait. As set out at paragraph 39 above, the Panel recommends that the appropriate compensation in such a case is the cost of repairing the damage that was a direct result of Iraq's invasion and occupation of Kuwait at such time as it would be reasonable, in all the circumstances, to expect repair to have taken place (with adjustments, in appropriate cases, for inadequate accounting for depreciation and saved expenses). 111/ Any other loss arises from MPW's independent decision to abandon the project.

463. In light of the above, the Panel recommends compensation in the amount of US$3,501,000 out of the US$9,372,359 claimed.

### (d) Motorways department - US$43,099,324

464. MPW asserts that three projects being supervised by the above-captioned department were interrupted by Iraq's invasion and occupation of Kuwait. For two of the projects, the Panel has calculated the amount of the losses claimed that is attributable to the factors set out at paragraph 450 above.

465. MPW had not formally concluded any contracts for the third project at the time of Iraq's invasion and occupation of Kuwait. MPW claims the difference between its estimate of what the contract prices would have been had the contracts been finalised and its estimate of the price of the anticipated post-liberation contracts. The Panel finds, applying the principles set out at paragraph 153 above, that there is insufficient evidence of consensus as to the essential provisions of these pre-invasion arrangements and so does not recommend any compensation in respect of them.

466. In light of the above, the Panel recommends compensation in the amount of US$18,994,000 out of the US$43,099,324 claimed.

### (e) Sanitation department - US$17,315,507

467. MPW asserts that eight contracts being supervised by the sanitation department were interrupted by Iraq's invasion and occupation of Kuwait. The Panel notes that one of the interrupted contracts was resumed by the Public Authority for Agriculture Affairs and Fish Resources ("PAAF"). The Panel recognises that part of the loss from the interruption of this contract will thus be borne by MPW and part by PAAF. However, to require MPW and PAAF to each claim for its portion of the loss would be too technical and rigid an approach, given that both parties are political subdivisions of the Government. 112/ The Panel has thus calculated the amount of the losses claimed that is attributable to the factors set out at paragraph 450 above.

468. The Panel finds that MPW saved expenses by not being party to five of the eight contracts for the period from 2 August 1990 until they were resumed. 113/ The amount of such savings exceeds the amount of the losses claimed that is attributable to the factors set out at paragraph 450 above for all eight contracts.

469. Accordingly, the Panel does not recommend any compensation for the interruption of the eight contracts being supervised by the sanitation department.

## 2. Real property - US$82,438,092

### (a) Buildings construction department - US$12,430,834

470. MPW asserts that the above-captioned department supervised the repair of a number of Government owned buildings damaged as a direct result of Iraq's invasion and occupation of Kuwait.

471. The Panel notes that the contractor for the repairs to the VIP lounge at the Kuwait International Airport was chosen without recourse to the normal competitive procurement procedures. However, the Panel finds that the absence of such procedures did not lead to increased costs. Furthermore, the works were performed in the immediate post-liberation period when prices of goods and services were, in general, higher than the norm. Applying the test set out at paragraph 31 above, the Panel finds that, in light of the Government's need for a secure arrival point for visitors to the GCC summit discussed at paragraph 203 above, the works were of such urgency that MPW could not reasonably be required to wait until prices had returned to normal patterns.

472. MPW's claim in relation to the police station complex at Wafra includes the cost of replacing its foundations. The Panel has made an adjustment to reflect the fact that the foundations did not require replacement.

473. The Panel finds that adjustments should also be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

474. In light of the above, the Panel recommends compensation in the amount of US5,918,000 out of the US$12,430,834 claimed.

### (b) Buildings maintenance department - US$11,092,052

475. MPW asserts that the above-captioned department supervised the repair of a number of Government owned buildings damaged as a direct result of Iraq's invasion and occupation of Kuwait.

476. The Panel finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

477. In light of the above, the Panel recommends compensation in the amount of US$5,095,000 out of the US$11,092,052 claimed.

### (c) Roads maintenance department - US$42,336,270

478. MPW seeks compensation for the costs incurred by the above-captioned department in repairing damage to Kuwait's road network (including road signs and traffic signals). 114/

479. The Panel notes that one of the contracts for the repair of roads and squares was undertaken in the immediate post-liberation period when prices of goods and services were, in general, higher than the norm. Applying the test set out at paragraph 31 above, the Panel finds that, in light of the Government's need for secure access to the GCC summit discussed at paragraph 203 above, the works were of such urgency that MPW could not reasonably be required to wait until prices had returned to normal patterns.

480. MPW's claim does not make any allowance for depreciation. The Panel finds, however, that an adjustment for inadequate accounting for depreciation should be made because the repairs have resulted in an increase in the useful life of those sections of the road network that were repaired.

481. The Panel also finds that adjustments should be made for saved expenses and insufficient evidence.

482. In light of the above, the Panel recommends compensation in the amount of US$18,328,000 out of the US$42,336,270 claimed.

### (d) Bubiyan Bridge - US$16,578,936

483. MPW asserts that the bridge linking Bubiyan Island with Kuwait's mainland was damaged by explosive ordnance during Iraq's invasion and occupation of Kuwait.

484. The repairs to the bridge had not commenced when MPW submitted its claim. It therefore seeks its estimate of the costs of repairs described as "emergency" repairs, but which were not commenced until mid-1994, permanent repairs to be undertaken thereafter, and related consultant's services.

485. The Panel finds that the "emergency" repairs were undertaken at the cost estimated by MPW in its claim. However, the contract for the permanent repairs was entered into in September 1998 at a price less than the amount estimated by MPW in its claim. The Panel has made an adjustment to correct this overstatement.

486. The Panel finds that it would have been reasonable, in all the circumstances, to expect the permanent repairs to have taken place immediately after the "emergency" repairs. The Panel has made adjustments to reflect the increased costs that resulted from the delay between the "emergency" and the permanent repairs. These increased costs resulted from the effect of inflation during the delay and the fact that some of the "emergency" repairs were duplicated by the permanent repairs.

487. The Panel has considered MPW's estimate of the cost of the consultant's services as a percentage of the estimated repair costs. The Panel finds that an adjustment should be made to reflect an overstatement in this percentage and the reduction in repair costs resulting from the adjustments discussed at paragraphs 485 and 486 above.

488. Further, the Panel finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

489. In light of the above, the Panel recommends compensation in the amount of US$4,741,000 out of the US$16,578,936 claimed.

### 3. Other losses - US$2,905,938

#### (a) Sanitation department's lost business records - US$2,905,938

490. This claim relates to a project to clean, survey and rehabilitate Kuwait's sewerage system. Prior to Iraq's invasion and occupation of Kuwait, the system had been divided into thirteen sectors. Contractors, under the supervision of consultants, would clean each sector and then draw a camera through the clean pipes. The resulting videotape would then be viewed in order to decide which parts of the sector required replacement. MPW's claim relates to the loss of the videotapes of the fifth and sixth sectors.

491. At the time of Iraq's invasion and occupation of Kuwait, almost one third of the fifth sector had been videotaped. MPW's engineers were able to recall from the videotapes viewed before Iraq's invasion and occupation of Kuwait that many of the pipes were heavily corroded and would require replacement in the near future. MPW directed its consultants to plan for immediate, rather than gradual, replacement of the pipes and claims the amount paid for the work undertaken on the fifth sector before Iraq's invasion and occupation of Kuwait. The Panel recommends that no compensation be awarded for the loss of the fifth sector videotapes because the plan for repairs was based on engineers' recollections of the contents of the videotapes and there is no evidence that immediate replacement of the pipes was more expensive than gradual replacement.

492. In relation to the sixth sector of the sewerage system, MPW claims the approximately 13 per cent of the contract prices that had been paid to the contractor and consultant up until the time of Iraq's invasion and occupation of Kuwait, less the amount saved by MPW because the post-liberation contract with the contractor was entered into at a lower price than the pre-invasion contract. 115/ The Panel recommends that compensation be awarded for the loss of the sixth sector videotapes because MPW did not have sufficient detail of the condition of the sixth sector to form any reliable opinion as to its condition. The Panel agrees with MPW's valuation of its loss. However, an adjustment should be made for insufficient evidence.

493. In light of the above, the Panel recommends compensation in the amount of US$239,000 out of the US$2,905,938 claimed.

## O. Ministry of Health

### Government Claim No. 36, UNCC Claim No. 5000164

Table 15. Summary Table for Ministry of Health

| Loss type/Loss element | Amount claimed US$ | Amount recommended US$ | Paragraph references |
|---|---|---|---|
| Real property | | | |
| a) Basic repair contracts | 766,046 | 618,000 | 494-498 |
| b) Individual work orders | 5,903,776 | 1,189,000 | 494-498 |
| c) Estimated cost for repairs not yet done | 4,643,597 | 312,000 | 494-498 |
| Sub-total | 11,313,419 | 2,119,000 | |
| Other tangible property | | | |
| a) Medicine | 38,206,743 | 31,191,000 | 499-502 |
| b) Medical equipment and instruments | 18,193,258 | 6,484,000 | 503-506 |
| c) Ambulances | 597,623 | 12,000 | 507-508 |
| d) Ordinary transportation vehicles | 440,338 | -257,000 a/ | 509-511 |
| e) Boats | 5,445,281 | 4,351,000 | 512-514 |
| f) Central stores | 35,941,726 | 21,536,000 | 515-517 |
| g) Other equipment | 5,906,316 | 3,467,000 | 518-520 |
| h) Furniture, fixtures and office equipment | 3,403,697 | 2,032,000 | 521-523 |
| Sub-total | 108,134,982 | 68,816,000 | |
| Bank accounts and securities | | | |
| a) Currency | 28,422 | 13,000 | 524 |
| Contract | 4,319,609 | 619,000 | 525-528 |
| Public service expenditures | | | |
| a) Additional transportation costs | 3,789,668 | 0 | 529-535 |
| b) Additional expenses of overseas treatment | 136,856,934 | 66,000,000 | 529-535 |
| c) Additional labour costs | 3,887,674 | 0 | 529-535 |
| Sub-total | 144,534,276 | 66,000,000 | |
| Payment or relief to others | | | |
| a) Relief paid to employees | 153,862,756 | 58,656,000 | 536-539 |
| Total | 422,193,464 | 196,223,000 | |
| Interest | 67,095,560 | | |

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a/ Negative amount represents account taken of residual value of assets procured through KERP (see paragraph 511 below).

### 1. Real property - US$11,313,419

#### (a) Basic repair contracts - US$766,046 116/

#### (b) Individual work orders - US$5,903,776

#### (c) Estimated cost for repairs not yet done - US$4,643,597

494. The Ministry of Health ("MoH") provides Kuwait's public health facilities. The Iraqi invading forces occupied its public service facilities. MoH seeks compensation for the resultant damage to and destruction of its headquarters in Kuwait City, six general care hospitals, nine specialised hospitals and 74 polyclinics. 117/ The main repairs undertaken were to electrical and water lines, automation systems and to other parts of MoH's buildings. 118/ Other repairs had not been carried out when the claim was submitted.

495. The Panel notes that, in relation to the repairs carried out to the Al-Adan hospital, a substantial proportion of the total repair cost was incurred as consultants' charges. Having considered the nature of the repairs carried out to the hospital and the consultants' work, the Panel finds that use of consultants was unnecessary and that the claim is overstated to the extent of the amounts paid to the consultants. The Panel has therefore made an adjustment to the amount claimed to correct that overstatement.

496. The Panel finds that MoH made savings in maintenance expenditure from 2 August 1990 until resumption of maintenance services, which took place after replacement contracts were concluded in July 1993, and has made an adjustment in respect of such savings.

497. The Panel finds that further adjustments should be made for inadequate accounting for depreciation and insufficient evidence.

498. In light of the above, the Panel recommends compensation in the amount of US$2,119,000 out of the US$11,313,419 claimed.

### 2. Other tangible property - US$108,134,982

#### (a) Medicine - US$38,206,743 119/

499. MoH seeks compensation for loss of medicine from its central warehouse, and from the warehouse receiving area and the Kuwait Port. In addition, MoH claims for the losses occasioned when medicine in the warehouse, and which remained after liberation, passed its expiry date without being used. MOH submits its claim based on the price for each

relevant item shown on its pre-invasion computerised inventory system, which survived Iraq's invasion and occupation of Kuwait. 120/

500. In valuing the loss, the Panel has noted from the pre-invasion computerised inventories that the earliest dates upon which the relevant medicine expired fell in July 1991 and the expiry dates continued into 1992. The Panel accordingly finds that as the medicine expired after the occupation and emergency periods, its loss is not a direct result of Iraq's invasion and occupation of Kuwait and has made an adjustment to the amount claimed in this regard.

501. The Panel finds that a further adjustment should be made for insufficient evidence.

502. In light of the above, the Panel recommends compensation in the amount of US$31,191,000 out of the US$38,206,743 claimed.

### (b) Medical equipment and instruments- US$18,193,258 121/

503. MoH seeks compensation for the loss of and damage to a variety of sophisticated medical equipment and instruments, including supplies and medical assets, and the cost of repairs to damaged equipment. 122/

504. The Panel finds that MoH made savings in maintenance expenditures from 2 August 1990 until repairs were effected to the damaged equipment, and has made an adjustment to the amount claimed in this regard.

505. The Panel finds that further adjustments should be made for inadequate accounting for depreciation, overstatement and insufficient evidence.

506. In light of the above, the Panel recommends compensation in the amount of US$6,484,000 out of the US$18,193,258 claimed.

### (c) Ambulances - US$597,623

507. MoH seeks compensation for the loss of 136 ambulances, some of which were replaced pursuant to KERP. The Panel finds that MoH underestimated the residual value of the replacement vehicles transferred pursuant to KERP and has therefore made an adjustment for incorrect valuation of KERP assets. The Panel finds that an adjustment should also be made for saved expenses.

508. In light of the above, the Panel recommends compensation in the amount of US$12,000 out of the US$597,623 claimed.

### (d) Ordinary transportation vehicles - US$440,338 123/

509. MoH seeks compensation for the loss of a variety of vehicles comprising diesel road tankers, construction cranes, automobiles, light and heavy trucks and buses. The Panel notes that a number of replacement vehicles were purchased for MoH pursuant to KERP, that the costs of those vehicles are being claimed separately, 124/ and that MoH adjusted its claim to take account of its estimate of the residual value of those vehicles.

510. The Panel finds that an adjustment should be made for saved expenses.

511. In addition, the Panel finds that MoH underestimated the residual value of the replacement vehicles transferred pursuant to KERP. As a result, the compensation that the Panel recommends in respect of this loss type (before taking account of the vehicles provided pursuant to KERP) is exceeded by the residual value, as adjusted by the Panel, of the vehicles so provided in the amount of US$257,000. The Panel recommends that this adjustment be applied to the claim for other tangible property.

### (e) Boats - US$5,445,281 125/

512. MoH seeks compensation for loss of or damage to nine boats. The Panel finds that three boats were returned through UNROP and is satisfied that the repair costs of such boats, and not their loss, has been claimed by MoH. 126/

513. The Panel finds that adjustments should be made for overstatement, inadequate accounting for depreciation, saved expenses and insufficient evidence.

514. In light of the above, the Panel recommends compensation in the amount of US$4,351,000 out of the US$5,445,281 claimed.

### (f) Central stores - US$35,941,726

515. MoH seeks compensation for the loss of the contents of its central stores during Iraq's invasion and occupation of Kuwait. MoH valued its loss based upon the historic cost of each item lost by reference to a comparison made between a surviving pre-invasion inventory and a subsequent inventory carried out after liberation. The Panel notes that the pre-invasion inventory listed few of the items asserted to have been lost, and that supporting documentation was not produced. 127/

516. Accordingly, the Panel finds that an adjustment should be made for insufficient evidence.

517. In light of the above, the Panel recommends compensation in the amount of US$21,536,000 out of the US$35,941,726 claimed.

### (g) Other equipment- US$5,906,316 128/

518. MoH seeks compensation for the loss of computers, and of communications, printing and electrical equipment.

519. The Panel finds that adjustments should be made for overstatement, inadequate accounting for depreciation, saved expenses and insufficient evidence.

520. In light of the above, the Panel recommends compensation in the amount of US$3,467,000 out of the US$5,906,316 claimed.

### (h) Furniture, fixtures and office equipment - US$3,403,697

521. MoH seeks compensation for the loss of a variety of furniture, fixtures, and office equipment.

522. The Panel finds that adjustments should be made for overstatement and insufficient evidence.

523. In light of the above, the Panel recommends compensation in the amount of US$2,032,000 out of the US$3,403,697 claimed.

## 3. Bank account and securities - US$28,422 129/

### (a) Currency - US$28,422

524. MoH seeks compensation for the loss of petty cash from its various offices and facilities. Applying the principles set out at paragraph 406 of the First "F3" Report, the Panel finds the claim is compensable subject to there being probative evidence, such as contemporaneous records or witness testimony, as to amounts ordinarily held by MoH. The Panel finds that an adjustment should be made for insufficient evidence. Accordingly, the Panel recommends compensation in the amount of US$13,000 out of the US$28,422 claimed.

## 4. Contract - US$4,319,609 130/

525. MoH seeks compensation for losses sustained due to the interruption of 14 contracts for construction, mechanical and electrical work, that were in existence on 2 August 1990. Such losses included the costs of site restoration and the additional cost of completing the contracts. In the

latter case, MoH asserts that the additional costs are to cover increased costs in the post-liberation period.

526. The Panel, continuing its approach set out at paragraph 63 of the First "F3" Report (repeated as paragraph 63 of the annex), finds that the losses claimed are compensable in so far as they are attributable to the factors set out in that paragraph, namely, site restoration costs, additional transportation costs and additional insurance costs. The evidence shows that part only of the losses claimed in respect of thirteen of the fourteen contracts claimed for is attributable to these factors.

527. The Panel notes from the evidence submitted that the remaining contract was for the provision of labour for the operation and maintenance of MoH facilities at hospitals, health centres and other areas. The Panel finds that the price increase claimed is not compensable, as it was not attributable to any of the three factors set out at paragraph 63 of the First "F3" Report.

528. In light of the above, the Panel recommends compensation in the amount of US$619,000 out of the amount of US$4,319,609 claimed.

### 5. Public service expenditures - US$144,534,276

#### (a) Additional transportation costs - US$3,789,668

#### (b) Additional expenses of overseas treatment - US$136,856,934

#### (c) Additional labour costs - US$3,887,674

529. MoH claims that, prior to Iraq's invasion and occupation of Kuwait, the Government employed nearly 3,200 physicians (80 per cent of whom were non-Kuwaitis) and 10,000 nurses (90 per cent of whom were non-Kuwaitis). MoH asserts that Iraq's invasion and occupation of Kuwait resulted in a mass exodus of those employees, the majority of whom did not return after liberation. Upon investigation, the Panel accepts MoH's assertions. 131/

530. MoH claims that, as a result of the above, it incurred the following costs:

(a) additional transportation costs, being the costs of returning employees to Kuwait after liberation to enable them to resume work and the costs of bringing new employees to Kuwait to replace those employees who did not return after liberation;

(b) additional expenses of overseas treatment, being the costs incurred in the two years to 30 June 1993 in sending patients to other countries for medical treatment (in the absence of Iraq's invasion and occupation of Kuwait, those patients would have been treated in Kuwait); and

(c) additional labour costs, being the increase in the salaries of cleaning, catering, laundry and technical services staff in the months immediately following liberation.

531. The Panel now turns to consider the compensability of each of these claims.

532. The Panel finds, in accordance with paragraphs 80 to 82 of the First "F3" Report, that the additional transportation costs are compensable, in so far as the amounts incurred are reasonable. However, the Panel also finds that MoH saved the costs of providing passages home to expatriate employees during the occupation and subsequent periods and that the costs so saved exceed the additional costs incurred. Accordingly, the Panel does not recommend any compensation for the additional transportation costs claimed.

533. The Panel also finds that the reasonable costs of additional overseas treatment are compensable, but has made an adjustment to reflect the fact that during the occupation period and up to 30 June 1991, MoH did not incur costs of providing treatment in Kuwait that it would have incurred absent Iraq's invasion and occupation of Kuwait. 132/

534. The Panel recommends that no compensation be awarded for the additional labour costs claimed because such increased costs were not attributable to any of the factors set out at paragraph 63 of the First "F3" Report.

535. In light of the above, the Panel recommends compensation in the amount of US$66,000,000 out of the US$144,534,276 claimed.

### 6. Payment or relief to others - US$153,862,756

#### (a) Relief paid to employees - US$153,862,756

536. MoH seeks compensation in the amount of US$153,862,756 for relief paid to employees.

537. The response of the Government to the Panel's questions regarding the Social Security Fund 133/ states that the amount claimed is based upon the employees' salaries before deduction of the social security contribution. The Panel accepts this statement and finds, in accordance with paragraph 41 of the First "F3" Report, that sums claimed in respect of social security

contributions are not compensable. The Panel has made an appropriate adjustment to the amount claimed in this regard.

538. As set out at paragraph 36 of the First "F3" Report, and subject to the percentage adjustment set out at paragraph 48 thereof, the Panel accepts the compensability of such relief paid to employees.

539. In light of the above, the Panel recommends compensation in the amount of US$58,656,000 out of the US$153,862,756 claimed.

## P. Ministry of Planning

### Government Claim No. 37, UNCC Claim No. 5000165

Table 16. Summary Table for Ministry of Planning

| Loss type/Loss element | Amount claimed US$ | Amount recommended US$ | Paragraph references |
|---|---|---|---|
| Other tangible property | | | |
| a) Computers and peripheral equipment tangible property loss | 20,389,861 | 7,679,000 | 540-543 |
| b) Office furniture equipment tangible property loss | 1,173,201 | 233,000 | 544-546 |
| Sub-total | 21,563,062 | 7,912,000 | |
| Payment or relief to others | | | |
| a) Temporary Bahrain office | 1,399,296 | 1,081,000 | 547-552 |
| b) Relief paid to employees | 8,386,168 | 3,354,000 | 553-556 |
| Sub-total | 9,785,464 | 4,435,000 | |
| Other losses | | | |
| a) Loss of information systems | 2,484,065 | 1,181,000 | 557-560 |
| b) Loss of field research data | 221,141 | 171,000 | 561 |
| Sub-total | 2,705,206 | 1,352,000 | |
| Total | 34,053,732 | 13,699,000 | |
| Interest | 5,411,400 | | |

### 1. Other tangible property - US$21,563,062

#### (a) Computers and peripheral equipment tangible property loss - US$20,389,861 134/

540. The Ministry of Planning ("MoP") acts as information technology consultant to other Government Ministries and organizations and provides social and economic statistical information for Kuwait. MoP seeks compensation for the cost of temporary operations in Bahrain after liberation, and for a variety of lost assets, including mainframe computers, printers and other peripheral equipment, and the costs of restoring its computer room. 135/

541. The Panel notes that, although MoP states that it lost three mainframe computers, MoP claims the costs of purchasing two replacement mainframes. The Panel finds that the replacement mainframes have a superior capacity and functionality than those lost and therefore that an adjustment should be made for enhancement.

542. The Panel finds that further adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

543. In light of the above, the Panel recommends compensation in the amount of US$7,679,000 out of the US$20,389,861 claimed

### (b) Office furniture equipment tangible property loss - US$1,173,201 136/

544. MoP claims compensation for the loss of a variety of office furniture and fixtures.

545. The Panel finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

546. In light of the above, the Panel recommends compensation in the amount of US$233,000 out of the US$1,173,201 claimed.

## 2. Payment or relief to others - US$9,785,464

### (a) Temporary Bahrain office - US$1,399,296

547. MoP asserts that it incurred a variety of expenses in establishing and operating an office in Bahrain from March 1991 to October 1991, while its own facilities in Kuwait were being restored. Such facilities were required to redevelop the computer systems for the payroll of all State employees, the personnel records for Government employees, the records for all Kuwaiti students and real estate records for the whole of Kuwait.

548. MoP seeks compensation for nine main categories of expenditure: communications fees, computer equipment, consultant services, employees' living allowances and bonuses, office and apartment rental, office equipment and supplies, petty cash, travel and transportation, and miscellaneous expenses.

549. Applying the principles set out at paragraph 79 of the First "F3" Report (repeated as paragraph 79 of the annex), the Panel, noting that the office was set up after liberation, finds that MoP's decision to establish and operate the office in Bahrain was reasonable in the circumstances, that the office was operated for a reasonable period, and therefore that the reasonable costs of so doing are compensable.

550. The Panel notes that, upon closure of the Bahrain office in October 1991, MoP scrapped computer and office equipment on the basis that such

equipment would have been incompatible with the new computer equipment installed at its restored facilities in Kuwait. The Panel finds that MOP did not take steps sufficient to mitigate its losses in that it failed to attempt to dispose of the scrapped equipment for value.

551. The Panel finds that adjustments should be made for inadequate accounting for residual value and insufficient evidence.

552. In light of the above, the Panel recommends compensation in the amount of US$1,081,000 out of the US$1,399,296 claimed.

### (b) Relief paid to employees - US$8,386,168

553. MoP seeks compensation in the amount of US$8,386,168 for relief paid to employees.

554. The evidence shows that the amount claimed is based upon the employees' salaries after deduction of the social security contribution.

555. As set out at paragraph 36 of the First "F3" Report, and subject to the percentage adjustment set out at paragraph 48 thereof, the Panel accepts the compensability of such relief paid to employees.

556. In light of the above, the Panel recommends compensation in the amount of US$3,354,000 out of the US$8,386,168 claimed.

## 3. Other losses - US$2,705,206

### (a) Loss of information systems - US$2,484,065

557. MoP seeks compensation for lost information, being application systems which it asserts were being developed by its systems development department at the date of Iraq's invasion and occupation of Kuwait, the development of which was interrupted as a result of Iraq's invasion and occupation of Kuwait. The systems were being developed for the use of other Ministries, namely, the Directorate General of Civil Aviation, the General Administration of Customs, the Ministry of Electricity and Water and the Shuaiba Port Authority. Included in MoP's claim is the cost of modifying billing software required to implement a decision taken by the Ministry of Electricity and Water after liberation to forgive utility charges to customers until 14 February 1992. Some of the systems were able to be re-created or completed after liberation but others were lost. The claim is based on the salary costs of the personnel employed to work on the various projects over their duration.

558. The Panel finds that the lost information is compensable in accordance with the principles set out at paragraphs 23 to 28 above, save for the costs of developing the new billing software referred to above. The Panel finds that the decision to forgive electricity and water charges was not a direct result of Iraq's invasion and occupation of Kuwait.

559. The Panel finds that adjustments should be made for economies of re-creation and insufficient evidence.

560. In light of the above, the Panel recommends compensation in the amount of US$1,181,000 out of the US$2,484,065 claimed.

### (b) Loss of field research data - US$221,141 137/

561. MoP also claims for lost field research data compiled manually by way of consumer questionnaires immediately before Iraq's invasion and occupation of Kuwait and destroyed by fire during Iraq's invasion and occupation of Kuwait. The claim is based on the salary costs of the personnel employed to work on the project for its duration. The Panel finds that the loss of the field research data is compensable in accordance with the principles set out at paragraphs 23 to 28 above, but that an adjustment should be made for insufficient evidence. The Panel therefore recommends compensation in the amount of US$171,000 out of the US$221,141 claimed.

## Q. Environment Protection Council

### Government Claim No. 38, UNCC Claim No. 5000166

Table 17. Summary Table for Environment Protection Council

| Loss type/Loss element | | Amount claimed US$ | Amount recommended US$ | Paragraph references |
|---|---|---|---|---|
| Other tangible property | | | | |
| a) | Stolen and damaged boats | 2,034,809 | 860,000 | 562-567 |
| b) | Oil spill clean up equipment | 1,795,289 | 1,387,000 | 568-570 |
| c) | Medical research equipment, computers and related peripherals | 71,575 | 58,000 | 571 |
| d) | Marine biology research equipment and lost goods in transit | 173,566 | 111,000 | 572 |
| Sub-total | | 4,075,239 | 2,416,000 | |
| Real property | | 61,016 | 51,000 | 573 |
| Total | | 4,136,255 | 2,467,000 | |
| Interest | | 657,720 | | |

### 1. Other tangible property - US$4,075,239

#### (a) Stolen and damaged boats - US$2,034,809 138/

562. The Environment Protection Council ("EPC") is responsible for the protection of the environment in Kuwait, whose membership comprises representatives of Ministries and other government organizations.

563. EPC seeks compensation for the loss of and damage to its fleet of pollution boats, which consisted of three work boats, two control boats and one surveillance boat. 139/

564. EPC claims that all six boats were lost or destroyed during Iraq's invasion and occupation of Kuwait. After liberation, the three work boats were recovered through UNROP and the surveillance boat was recovered from another source. EPC claims that the work boats were damaged beyond repair 140/ and the surveillance boat was damaged and its equipment removed but capable of repair.

565. The Panel finds that further adjustments should be made for overstatement, saved expenses and insufficient evidence.

566. The Panel finds that as a result of EPC's overstatement of the amount claimed (for which the Panel has made an adjustment in the preceding

paragraph), the deduction EPC applied in respect of depreciation exceeds the deduction warranted, in that the percentage deduction should be applied to a lower initial cost. The Panel has therefore re-calculated the deduction to be applied for depreciation.

567. In light of the above, the Panel recommends compensation in the amount of US$860,000 out of the US$2,034,809 claimed.

### (b) Oil spill clean up equipment - US$1,795,289

568. EPC seeks compensation for the loss of oil spill clean-up equipment, including oil barriers, oil scrapers and shore cleaning vehicles.

569. The Panel finds that adjustments should be made for saved expenses and insufficient evidence.

570. In light of the above, the Panel recommends compensation in the amount of US$1,387,000 out of the US$1,795,289 claimed.

### (c) Medical research equipment, computers and related peripherals - US$71,575 141/

571. EPC seeks compensation for the loss of medical research equipment together with losses of computers and related peripherals. The Panel finds that adjustments should be made for saved expenses, enhancement, inadequate accounting for depreciation and insufficient evidence. In light of the above, the Panel recommends compensation in the amount of US$58,000 out of the US$71,575 claimed.

### (d) Marine biology research equipment, lost goods in transit - US$173,566 142/

572. EPC seeks compensation for the loss of marine biology equipment and a gas chromatograph lost in transit. The Panel finds that, having paid for the goods in June 1990, EPC is the proper claimant for the chromatograph. 143/ The Panel finds that adjustments should be made for saved expenses and insufficient evidence. The Panel therefore recommends compensation in the amount of US$111,000 out of the US$173,566 claimed.

## 2. Real property - US$61,016 144/

573. The real property losses claimed by EPC are for damage to its nature reserves situated in the northern part of Kuwait at Jahra and Doha, comprising the costs of repairs to the reserves and the cost of a consultant nature conservationist. The Panel finds that the consultant was not required for the repairs, given the limited nature and extent of the

damage to the reserves, and has made an adjustment for the consequent overstatement to the amount claimed. The Panel also finds that adjustments should be made for inadequate accounting for depreciation and insufficient evidence, and accordingly recommends compensation in the amount of US$51,000 out of the US$61,016 claimed.

## R. Ministry of Communications

### Government Claim No. 45, UNCC Claim No. 5000173

Table 18. Summary Table for Ministry of Communications

| Loss type/Loss element | Amount claimed US$ | Amount recommended US$ | Paragraph references |
|---|---|---|---|
| Real property | 38,959,208 | 20,018,000 | 574-583 |
| Other tangible property | | | |
| a) Switches | 40,265,195 | 25,527,000 | 584-588 |
| b) Other equipment | 24,221,209 | 16,504,000 | 589-592 |
| c) Stores inventories | 39,601,861 | 29,606,000 | 593-596 |
| d) Furniture and fixtures | 612,947 | 429,000 | 597-599 |
| e) Transportation department assets | 598,368 | 493,000 | 600-603 |
| Sub-total | 105,299,580 | 72,559,000 | |
| Contract | | | |
| a) Construction of extension of exchange and construction of new post offices | 112,866 | 55,000 | 604-608 |
| b) Buildings maintenance | 719,014 | 0 | 609-611 |
| Sub-total | 831,880 | 55,000 | |
| Payment or relief to others | | | |
| (a) Relief paid to employees | 84,548,260 | 31,283,000 | 612-616 |
| Total | 229,638,928 | 123,915,000 | |
| Interest | 36,710,520 | | |

### 1. Real property - US$38,959,208 145/

574. The Ministry of Communications ("MoC") is responsible for providing all telecommunication and postal services in Kuwait.

575. MoC seeks compensation for damage to its buildings, being exchanges and relay and receiving and transmission stations (of which six were destroyed) and for damage to its local and international transmission network. In a technical mission to Kuwait undertaken in November 1999, certain MoC facilities and equipment were inspected on behalf of the Panel.

576. MoC's claim for its building losses includes the cost of a damage assessment report regarding the South Subahiya exchange, one of Kuwait's main switching centres, and the subsequent cost of demolition of the site. The Panel notes that the report advised that the site did not require total demolition, but finds that the costs of partial demolition and repair would have exceeded those incurred in demolishing and rebuilding the site. It therefore finds that the costs of demolition and reconstruction are compensable. 146/

577. Amounts claimed in respect of other buildings have been calculated on the basis of standard construction costs per square metre. The Panel finds that this is a reasonable method of valuing the loss in the circumstances, but that such unit costs were overstated, and has made an adjustment to the amount claimed in this regard.

578. The Panel finds that further adjustments should be made for inadequate accounting for depreciation, inadequate accounting for residual value, saved expenses and insufficient evidence.

579. MoC's transmission network comprised cables and fibres, including coaxial cables, and microwave links. MoC seeks compensation for loss and damage to its coaxial cables and microwave links. 147/ Prior to Iraq's invasion and occupation of Kuwait, the network equipment was largely analogue. The Panel is satisfied that MoC was, prior to Iraq's invasion and occupation of Kuwait, committed to a programme of conversion from analogue to digital technology, and that MoC has continued this programme in the post-liberation period. 148/

580. MoC undertook its repair work to the coaxial cables in accordance with a repair and replacement strategy, pursuant to which it carried out repairs to the network where possible, but replaced parts of it where necessary. Most of the replacement parts purchased were digital parts. Having regard to the world-wide conversion to digital telecommunications, the Panel finds that the repair and replacement strategy was reasonable in the circumstances. 149/

581. As a result of the replacements and repairs to the network, MoC has operated a part analogue, part digital network in the post-liberation period. MoC's claim includes the costs of certain interface equipment 150/ required to enable a part analogue, part digital system to operate until the entire system is upgraded to operate using digital technology. The Panel finds that such equipment and its installation would have been required in any event. Accordingly, the Panel does not recommend any compensation for the costs of the interface equipment.

582. The Panel finds that adjustments should be made for inadequate accounting for depreciation and for insufficient evidence.

583. In light of the above, the Panel recommends compensation in the amount of US$20,018,000 out of the US$38,959,208 claimed.

### 2. Other tangible property - US$105,299,580

#### (a) Switches - US$40,265,195

584. MoC seeks compensation for losses of switches, which are items of equipment used to route and connect communications. The items lost included local switches, an international exchange, a mobile exchange, public automatic branch exchanges, remote switching units and remote control equipment ("RSU/RCE equipment") and packet switches. MoC also seeks compensation for switch repairs.

585. The Panel notes that MoC replaced more switches than were destroyed and adjusted the amount claimed so as to exclude purchases made to replace switches that were not destroyed as a result of Iraq's invasion and occupation of Kuwait. The Panel finds that MoC's adjustment understated the cost of the purchases to be deducted and has made an adjustment for overstatement in this regard. The Panel notes that, although many of the switches destroyed were analogue switches, all replacements purchased were digital switches. The Panel finds that the purchase of digital switches was reasonable in the circumstances, but that MoC overestimated the useful life of the destroyed switches given the conversion from analogue to digital technology. It has therefore made an adjustment to the amount claimed for inadequate accounting for depreciation.

586. The Panel finds that the amounts claimed in respect of the mobile exchange and the RSU/RCE equipment overstate the measure of inflation to be applied so as to derive the replacement cost claimed and has made a further adjustment in this regard.

587. The Panel finds that further adjustments should be made for saved expenses and for insufficient evidence.

588. In light of the above, the Panel recommends compensation in the amount of US$25,527,000 out of the US$40,265,195 claimed.

#### (b) Other equipment - US$24,221,209 151/

589. MoC seeks compensation for losses of other equipment, which include technical services equipment, a coastal station, maintenance equipment for the international network, international telephone booths, a computer system, a frequency and wireless control system, and videotext and facsimile machines.

590. The Panel finds that, in its claim for the computer system, MoC overestimated some of the useful lives of the equipment lost, and has made an adjustment for inadequate accounting for depreciation to take account of

the overestimate, and further adjustments for enhancement, saved expenses and insufficient evidence.

591. For the remaining equipment, the Panel finds that adjustments should be made for overstatement, enhancement, inadequate accounting for depreciation, saved expenses and insufficient evidence.

592. In light of the above, the Panel recommends compensation in the amount of US$16,504,000 out of the US$24,221,209 claimed.

### (c) Stores inventories - US$39,601,861 152/

593. MoC seeks compensation for loss of its stores inventories, which comprise spare parts and other technical equipment for use in repairs, system back-ups or maintenance, and furniture and office equipment, stored in its warehouses. MoC based its claim on its 1989 records, updated using the estimates of MoC personnel, its later records having been destroyed, with deductions for the estimated percentage of the stores that remained after liberation.

594. MoC's main warehouse was visited in November 1999 on the Panel's behalf, in order to inspect the damaged stock that remained after liberation.

595. The Panel finds that adjustments should be made for overstatement, inadequate accounting for depreciation and insufficient evidence.

596. In light of the above, the Panel recommends compensation in the amount of US$29,606,000 out of the US$39,601,861 claimed.

### (d) Furniture and fixtures - US$612,947 153/

597. MoC seeks compensation for lost furniture and fixtures, basing its claim on the total purchases of furniture and fixtures from liberation until 30 June 1993. 154/

598. The Panel finds that an adjustment should be made for insufficient evidence.

599. In light of the above, the Panel recommends compensation in the amount to US$429,000 out of the US$612,947 claimed.

### (e) Transportation department assets - US$598,368

600. In addition to the main activities set out in paragraph 574 above, MoC's transportation department supplies MoC with vehicles and regulates the navigation of shipping traffic.

601. MoC seeks compensation for loss of, and damage to, the transportation department's assets, being navigational aids, and for the cost of clearing underwater debris. 155/

602. The Panel finds that an adjustment should be made for insufficient evidence.

603. In light of the above, the Panel recommends compensation in the amount of US$493,000 out of the US$598,368 claimed.

## 3. Contract - US$831,880 156/

### (a) Construction of extension of exchange and construction of new post offices - US$112,866

604. MoC seeks compensation for the losses sustained due to the interruption of two projects, including the costs of site restoration and the additional costs of completing one of the projects.

605. After liberation, MoC negotiated a contract to complete the first project with a new contractor, as the original contractor's completion price was considered too expensive.

606. The Panel, continuing in its approach set out at paragraph 63 of the First "F3" Report (repeated as paragraph 63 of the annex), finds that the losses claimed are compensable in so far as they are attributable to the factors set out in that paragraph, namely, site restoration costs, additional transportation costs and additional insurance costs.. The evidence shows that part only of the amount claimed is so attributable.

607. The second project was abandoned after liberation. MoC valued its loss as 10 per cent of the original contract price, being its estimate of the value of the work at the date of Iraq's invasion and occupation of Kuwait. The Panel finds that the decision to abandon the project was not a direct result of Iraq's invasion and occupation of Kuwait 157/ and accordingly recommends compensation for the cost of repairing the damage that was a direct result of Iraq's invasion and occupation of Kuwait. 158/ (see paragraph 39 above). Any other loss arises from MoC's independent decision to abandon the project.

608. In light of the above, the Panel recommends compensation in the amount of US$55,000 out of the US$112,866 claimed.

### (b) Buildings maintenance - US$719,014

609. MoC claims that, prior to Iraq's invasion and occupation of Kuwait, it routinely entered into contracts to clean and maintain MoC buildings, including various exchanges and stations. In January and October of 1992, respectively, MoC entered into two contracts at a price that it claims was much higher than it had paid for equivalent pre-invasion maintenance contracts, due to the severe damage to MoC's buildings occasioned during Iraq's invasion and occupation of Kuwait.

610. The Panel finds that MoC will have made savings in maintenance expenditure which exceed the amount referable to the three factors set out at paragraph 63 of the First "F3" Report.

611. Accordingly, the Panel does not recommend any compensation in respect of this claim.

## 4. Payment or relief to others - US$84,548,260

### (a) Relief paid to employees - US$84,548,260

612. MoC seeks compensation in the amount of US$84,548,260 for relief paid to employees.

613. The response of the Government to the Panel's questions regarding the Social Security Fund 159/ states that the amount claimed is based upon the employees' salaries after deduction of the social security contribution. The Panel accepts this statement.

614. As set out at paragraph 36 of the First "F3" Report, and subject to the percentage adjustment set out at paragraph 48 thereof, the Panel accepts the compensability of such relief paid to employees.

615. The Panel also finds that an adjustment should be made for insufficient evidence.

616. In light of the above, the Panel recommends compensation in the amount of US$31,283,000 out of the US$84,548,260 claimed.

## S. Public Authority for Applied Education and Training

### Government Claim No. 46, UNCC Claim No. 5000175

Table 19. Summary Table for Public Authority for Applied Education and Training

| Loss type/Loss element | Amount claimed US$ | Amount recommended US$ | Paragraph references |
|---|---|---|---|
| Real property | | | |
| a) Construction administration contract | 4,706,875 | 3,295,000 | 617-620 |
| b) Service contracts | 30,061,834 | 19,315,000 | 621-625 |
| c) Maintenance contracts | 368,242 | 241,000 | 626-628 |
| d) Repair estimates | 1,010,023 | 628,000 | 629-632 |
| Sub-total | 36,146,974 | 23,479,000 | |
| Contract | 111,699 | 19,000 | 633-634 |
| Other tangible property | 55,579,725 | 31,848,000 | 635-638 |
| Public service expenditures | | | |
| a) Cost of recruiting new staff | 38,725 | 15,000 | 639 |
| b) Crash course | 225,660 | 124,000 | 640-643 |
| Sub-total | 264,385 | 139,000 | |
| Business transaction or course of dealing | 1,990,031 | 0 | 644-649 |
| Bank accounts and securities | 32,613 | 18,000 | 650 |
| Payment or relief to others | | | |
| a) Relief paid to employees | 26,013,674 | 10,406,000 | 651-654 |
| b) Three months post liberation bonuses | 578,326 | 578,326 | 655-657 |
| Sub-total | 26,592,000 | 10,984,326 | |
| Evacuation costs (of citizens or other nationals) | 59,437 | 32,000 | 658 |
| Total | 120,776,864 | 66,519,326 | |
| Interest | 19,193,360 | | |

#### 1. Real property - US$36,146,974

##### (a) Construction administration contract - US$4,706,875

617. The Public Authority for Applied Education and Training ("PAAET") provides technical applied education and training in Kuwait. It seeks compensation for damage to, and losses from, its facilities and buildings.

618. In June 1991, PAAET engaged a contractor to supervise and manage the repairs to its colleges and training centres. The Panel finds that the reasonable costs of so doing are compensable, in that such work was an

integral part of the required repairs and could not have been performed by PAAET's existing engineering staff.

619. The Panel finds that, although the contractor was not chosen using normal competitive procurement procedures, the cost incurred was reasonable and would not have been reduced had competitive procurement procedures been adopted. However, the Panel finds that an adjustment should be made for insufficient evidence.

620. In light of the above, the Panel recommends compensation in the amount of US$3,295,000 out of the US$4,706,875 claimed.

### (b) Service contracts - US$30,061,834

621. During June and July of 1991, the contractor referred to at paragraph 618 above negotiated, on behalf of PAAET, five contracts for the repair of damaged colleges and training centres.

622. The Panel finds that, although these contracts were not awarded pursuant to competitive procurement procedures, the costs incurred were reasonable and would not have been reduced if competitive procurement procedures had been adopted.

623. PAAET's claim does not make any allowance for depreciation. The Panel finds, however, that an adjustment should be made for inadequate accounting for depreciation in relation to repairs to decorative and electrical items because those repairs resulted in an increase in the useful life of those items. 160/

624. The Panel also finds that adjustments should be made for saved expenses and insufficient evidence.

625. In light of the above, the Panel recommends compensation in the amount of US$19,315,000 out of the US$30,061,834 claimed.

### (c) Maintenance contracts - US$368,242

626. In March 1992 and January 1993, PAAET signed two contracts for repair and regular maintenance work at its colleges and training centres. PAAET claims that portion of the cost of the contracts referable to repairing some of the damage not covered by the contracts discussed at paragraphs 621 to 625 above.

627. The Panel finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

628. In light of the above, the Panel recommends compensation in the amount of US$241,000 out of the US$368,242 claimed.

### (d) Repair estimates - US$1,010,023

629. PAAET claims the estimated cost of repairs to three facilities that had not been commenced at the time it submitted its claim.

630. The Panel finds that repairs to one of the facilities are now complete and that PAAET intends eventually to repair the other two facilities. In accordance with paragraph 21 above, the Panel finds the losses compensable.

631. The Panel also finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

632. In light of the above, the Panel recommends compensation in the amount of US$628,000 out of the US$1,010,023 claimed.

### 2. Contract - US$111,699 161/

633. PAAET asserts that a contract for the construction of lecture halls was interrupted by Iraq's invasion and occupation of Kuwait.

634. The Panel, continuing its approach set out at paragraph 63 of the First "F3" Report (repeated as paragraph 63 of the annex), finds that the losses claimed are compensable in so far as they are attributable to the factors set out in that paragraph and has calculated the amount of the loss claimed that is so attributable. The Panel recommends compensation in the amount of US$19,000 out of the US$111,699 claimed.

### 3. Other tangible property - US$55,579,725 162/

635. PAAET seeks compensation for the loss of, or damage to, all of its furniture, office equipment, scientific equipment, kitchen supplies, library materials and other tangible property from its classrooms, laboratories, workshops and other facilities. PAAET was able only to estimate its losses because of the destruction of many of its pre-invasion documents. The Panel has therefore made an adjustment for insufficient evidence.

636. PAAET valued its loss by reference to the book value of its inventory of tangible property as at 30 June 1990, as summarised in a listing which survived Iraq's invasion and occupation of Kuwait. To this value it applied two inflation factors (one for the period from the initial purchase of the items until 2 August 1990 and one for the period from liberation until replacement) and a depreciation factor (to reflect that the tangible

property was not new at the time of Iraq's invasion and occupation of Kuwait). While the Panel agrees with this method of valuation, it has made adjustments to reflect an overstatement by PAAET in the inflation factor for the period from liberation until replacement and to reflect that the depreciation factor was understated for each type of tangible property lost.

637. The Panel finds that an adjustment should also be made for saved expenses.

638. In light of the above, the Panel recommends compensation in the amount of US$31,848,000 out of the US$55,579,725 claimed.

### 4. Public service expenditures - US$264,385 163/

#### (a) Cost of recruiting new staff - US$38,725

639. PAAET asserts that it incurred a variety of expenses in locating and attracting teachers and professors to replace 275 of its employees who left Kuwait as a result of Iraq's invasion and occupation of Kuwait and did not return. The Panel finds that the cost of replacing only some of these employees is compensable 164/ and that an adjustment should be made for insufficient evidence. Accordingly, the Panel recommends compensation in the amount of US$15,000 out of the US$38,725 claimed.

#### (b) Crash course - US$225,660

640. PAAET claims the costs of providing a course to allow its students to undertake the studies that, in the absence of Iraq's invasion and occupation of Kuwait, would have been undertaken in the academic year 1991/92. 165/

641. The Panel finds that the loss of the 1990/91 academic year was a direct result of Iraq's invasion and occupation of Kuwait and therefore recommends that compensation be awarded for that portion of the costs of the course that are above and beyond those that would have been incurred in the absence of Iraq's invasion and occupation of Kuwait (for example, on standard summer courses).

642. The Panel finds that an adjustment should be made for insufficient evidence.

643. Accordingly, the Panel recommends compensation in the amount of US$124,000 out of the US$225,660 claimed.

### 5. Business transaction or course of dealing - US$1,990,031

#### (a) Revenue loss - US$1,990,031

644. Prior to Iraq's invasion and occupation of Kuwait, PAAET earned revenue from renting housing to its employees, selling food to its employees and students, charging fees for tuition and registration, and providing training programmes to Government departments and private companies. PAAET claims the loss in this revenue for the period 2 August 1990 to 30 June 1993, calculated as the difference between its estimate of the revenue that would have been earned in the absence of Iraq's invasion and occupation of Kuwait and the revenue in fact earned.

645. The Panel finds that the loss of revenue is compensable for the period that the revenue was affected as a direct result of Iraq's invasion and occupation of Kuwait, subject to deductions for exceptional post-liberation revenue, for revenue that would have been paid by other Government departments and for saved expenses. 166/

646. The Panel finds that the revenue was affected as a direct result of Iraq's invasion and occupation of Kuwait until 30 June 1993, except for the revenue from renting housing to employees, which was only so affected until 30 June 1992. 167/ The Panel has made the appropriate adjustment.

647. The Panel has also made an adjustment to reflect that portion of PAAET's revenue which would have been derived from other Government departments.

648. Finally, the Panel sought information from PAAET as to the costs involved in the generation of its revenue. This disclosed that the expenses that would have been incurred in earning the lost revenue for the relevant periods exceeded that lost revenue.

649. Accordingly, the Panel does not recommend any compensation for this loss type.

### 6. Bank accounts and securities - US$32,613

#### (a) Loss of petty cash - US$32,613 168/

650. PAAET seeks compensation for the loss of cash from its various offices and facilities. Applying the principles set out at paragraph 406 of the First "F3" Report, the Panel finds the claim is compensable subject to there being probative evidence, such as contemporaneous records or witness testimony, as to amounts ordinarily held by PAAET. The Panel finds that an adjustment should be made for insufficient evidence. Accordingly, the Panel

recommends compensation in the amount of US$18,000 out of the US$32,613 claimed.

### 7. Payment or relief to others - US$26,592,000

#### (a) Relief paid to employees - US$26,013,674

651. PAAET seeks compensation in the amount of US$26,013,674 for relief paid to employees.

652. The response of the Government to the Panel's questions regarding the Social Security Fund 169/ states that the amount claimed is based upon the employees' salaries after deduction of the social security contribution. The Panel accepts this statement.

653. As set out at paragraph 36 of the First "F3" Report, and subject to the percentage adjustment set out at paragraph 48 thereof, the Panel accepts the compensability of such relief paid to employees.

654. In light of the above, the Panel recommends compensation in the amount of US$10,406,000 out of the US$26,013,674 claimed.

#### (b) Three months post liberation bonuses - US$578,326

655. PAAET seeks compensation for payments made to its employees for work undertaken during the emergency period in cleaning and preparing PAAET's facilities for the start of the academic year in September 1991. Shortly after liberation, PAAET contacted the employees and promised them the payments in order to induce them to undertake the cleaning and preparation work.

656. The Panel finds that the existence of a promise to pay before the work was undertaken, together with the fact that the work was required as a direct result of Iraq's invasion and occupation of Kuwait, differentiates this claim from that discussed at paragraph 363 above and therefore recommends that compensation be awarded for the payments. The Panel also finds that the amount paid was reasonable and that there is no duplication between the work performed by the employees who received the bonus payments and the work in relation to the real and other tangible property losses discussed above.

657. PAAET provided evidence that it had, in fact, paid more than it had claimed for the bonus payments. However, the Panel cannot recommend the award of more than the sum claimed and therefore recommends payment in full in the amount of US$578,326.

### 8. Evacuation costs (of citizens or other nationals) - US$59,437

#### (a) Costs of repatriation of staff - US$59,437 170/

658. PAAET seeks compensation for the cost of bringing 192 of its teachers and instructors back to Kuwait after liberation. The Panel finds, as set out at paragraph 81 of the First "F3" Report, that such costs are compensable. The Panel finds that adjustments should be made for insufficient evidence. 171/ In light of the above, the Panel recommends compensation of US$32,000 out of the US$59,437 claimed.

## T. Public Authority for Agriculture Affairs and Fish Resources

### Government Claim No. 55, UNCC Claim No. 5000187

Table 20. Summary Table for Public Authority for Agriculture Affairs and Fish Resources

| Loss type/Loss element | Amount claimed US$ | Amount recommended US$ | Paragraph references |
|---|---|---|---|
| Real property | 24,508,382 | 8,596,000 | 659-665 |
| Public service expenditures | | | |
| a) Chicken vaccine | 1,672,576 | 1,672,576 | 666-671 |
| Other tangible property | | | |
| a) Pure Arabian horses and Zoo animals | 2,865,697 | 1,417,000 | 672-677 |
| b) Medical instruments and equipment | 396,917 | 230,000 | 678 |
| c) Medicine and animal feed | 1,103,857 | 520,000 | 679-681 |
| d) Vehicles and heavy equipment | 2,703,615 | 2,215,000 | 682-684 |
| e) Office furniture and equipment | 1,078,262 | 703,000 | 685-687 |
| f) Inventory in store | 693,160 | 584,000 | 688-690 |
| Sub-total | 8,841,508 | 5,669,000 | |
| Payment or relief to others | | | |
| a) Relief paid to employees | 8,917,081 | 3,325,000 | 691-695 |
| Other losses | 2,163,838 | 29,000 | 696-699 |
| Business transaction or course of dealing | | | |
| a) Zoo entry and quarantine fees | 436,859 | 0 | 700-703 |
| Contract | | | |
| a) Forestation and preservation areas contract loss | 381,639 | 363,000 | 704-706 |
| Total | 46,921,883 | 19,654,576 | |
| Interest | 7,456,480 | | |

### 1. Real property - US$24,508,382

#### (a) Landscape areas property loss - US$8,342,211

#### (b) Gardens real property loss - US$2,861,290

#### (c) Buildings and reservoirs real property loss - US$5,744,596 172/

#### (d) Forestation and Foliage preservation areas real property loss - US$7,560,285 173/

659. The Public Authority for Agriculture and Fish Resources ("PAAF") is responsible for administering programmes and regulations relating both to plants and live animals in Kuwait, including landscaping of public areas, forestation projects and animal health, and regulates the importation of live animals and plants into Kuwait.

660. The real property losses of PAAF comprise damage to PAAF's buildings (of which one, the finance department, was totally destroyed) and other facilities. Such facilities comprised irrigation reservoirs, forestation and foliage preservation areas (including plants), facilities of the Kuwait Zoological Gardens Department (the "Zoo") and Kuwait's roadside landscaping and public gardens, including 11 public gardens that were under construction at the date of Iraq's invasion and occupation of Kuwait.

661. In addition, PAAF claims the costs incurred in retaining external consultants to perform damage assessments for nine of the eleven gardens that were under construction when damaged.

662. As to those parts of the claim in respect of landscape areas and gardens, PAAF based its claim on the estimated cost of repairing and replacing lost and damaged plants and seedlings. The Panel finds that repair and replacement were carried out as part of general maintenance contracts, and finds that it is not possible to ascertain from those contracts the amount pertaining to the repairs and replacements. Accordingly, the Panel has considered the claim on the basis of the estimates initially submitted. The Panel notes that the estimates allow for maintenance and husbandry of the new plants and seedlings for a five year period. The Panel finds that such maintenance and husbandry is necessary to enable the plants and seedlings to become established, but for a period of one year only. PAAF would have been required to undertake regular replanting of its landscape areas and gardens, and to carry out regular care and maintenance, in any event, and the Panel has made an adjustment for overstatement in this regard.

663. The Panel is satisfied that it is a generally accepted horticultural practice periodically to regenerate and restock trees, plants and shrubs under a managed programme so as to maintain a sustainable environment. The Panel therefore finds that the forestation and foliage preservation areas

concerned would have required regeneration and restocking every four years. The Panel also finds that repairs to certain buildings would have extended their useful life and that the estimates of useful life for some buildings should be adjusted. As a result, the Panel finds that adjustments should be made for inadequate accounting for depreciation.

664. The Panel also finds that further adjustments should be made for overstatement, saved expenses and insufficient evidence.

665. In light of the above, the Panel recommends compensation in the amount of US$8,596,000 out of the US$24,508,382 claimed.

## 2. Public service expenditures - US$1,672,576

### (a) Chicken vaccine - US$1,672,576

666. PAAF claims for the costs incurred from June 1992 to June 1997 in a programme undertaken by PAAF, the aim of which was to eradicate Gumboro disease from Kuwait's poultry stock. Under the programme, chickens imported into and bred within Kuwait were vaccinated against Gumboro disease. The Panel notes that although PAAF asserts that Gumboro disease was not totally eradicated from its poultry stock as at the date of submission of its claim, the claim is limited to costs incurred to June 1997.

667. Gumboro disease is a highly contagious disease that affects the immunity of chickens, and results in retarded growth and eventual death in approximately 40 per cent of cases. PAAF claims that, prior to Iraq's invasion and occupation of Kuwait, the poultry stock in Kuwait was kept free of Gumboro disease as a result of Government regulations, which prevented the importation of live chickens greater than one day old and permitted imports only from countries known to be free of the disease.

668. PAAF claims that, during the occupation period, and for nine months after liberation, it was unable to enforce the above regulations and that during the occupation period Iraq imported chickens into Kuwait. After liberation, Kuwait imported live chickens from sources other than in accordance with the above regulations, in order to alleviate food shortages. The Panel finds that the Government's actions were to be expected in the circumstances.

669. By Procedural Order 38 issued in January 2000, the Panel sought information, inter alia, regarding the pre-invasion incidence of Gumboro disease in Kuwait. The Panel accepts that there was no proven incidence of Gumboro disease in Kuwait prior to Iraq's invasion and occupation.

670. The Panel therefore finds that the introduction of Gumboro disease occurred as a direct result of Iraq's invasion and occupation of Kuwait, and the reasonable costs of eradication of the disease are accordingly compensable. The Panel further finds that the duration of the programme was reasonable.

671. In light of the above, the Panel recommends payment in full of the US$1,672,576 claimed.

### 3. Other tangible property - US$8,841,508

#### (a) Pure Arabian horses and Zoo animals - US$2,865,697

672. PAAF seeks compensation for the loss of 30 pure Arabian horses, 191 Zoo animal exhibits, and assorted birds and reptiles.

673. PAAF valued its loss on the basis of estimated replacement cost. The Panel notes that 10 horses were pregnant when lost and that PAAF valued each unborn foal at a value equal to an adult horse. The Panel finds that the claim is overstated in that it fails to take into account the statistical rate of failure of pregnancy and in that the market value of a foal is generally lower than that of an adult horse. The Panel has therefore made an adjustment for overstatement.

674. In addition, the Panel notes that 72 animals were received in the post-liberation period as donations from governments and private individuals. The Panel finds that these animals replaced some of the lost animals at no expense to Kuwait and a consequent adjustment should be made to the amount claimed for the animals lost.

675. The Panel further finds that PAAF made savings in operating expenditure until the Zoo was reopened in 1993 , and for a period of 12 months as regards the Arabian horses, and has therefore made an adjustment for saved expenses. 174/

676. The Panel finds that adjustments should also be made for insufficient evidence.

677. In light of the above, the Panel recommends compensation in the amount of US$1,417,000 out of the US$2,865,697 claimed.

### (b) Medical instruments and equipment - US$396,917 175/

678. PAAF seeks compensation for the loss of a variety of medical instruments and equipment, including incubators, microscopes, refrigerators, freezers, an X-ray machine and other veterinary, medical and surgical equipment. The Panel finds that an adjustment should be made for inadequate accounting for depreciation. In light of the above, the Panel recommends compensation in the amount of US$230,000 out of the US$396,917 claimed.

### (c) Medicine and animal feed - US$1,103,857 176/

679. PAAF seeks compensation for the loss of medicine and animal feed.

680. The Panel finds that adjustments should be made for saved expenses (since re-stocking of lost animals did not commence until 1991) and insufficient evidence.

681. In light of the above, the Panel recommends compensation in the amount of US$520,000 out of the US$1,103,857 claimed.

### (d) Vehicles and heavy equipment - US$2,703,615 177/

682. PAAF seeks compensation for vehicles and heavy equipment that it claims were lost, damaged or destroyed. After liberation, 38 vehicles and pieces of heavy equipment were found, and of them, 12 were damaged beyond repair.

683. The Panel finds that adjustments should be made for saved expenses and insufficient evidence.

684. In light of the above, the Panel recommends compensation in the amount of US$2,215,000 out of the US$2,703,615 claimed.

### (e) Office furniture and equipment - US$1,078,262 178/

685. PAAF seeks compensation for the loss of a variety of office furniture and equipment, including desks, chairs, shelves, audiovisual equipment, microfilm equipment and personal computers.

686. The Panel finds that adjustments should be made for inadequate accounting for depreciation, saved expenses, enhancement and insufficient evidence.

687. In light of the above, the Panel recommends compensation in the amount of US$703,000 out of the US$1,078,262 claimed.

### (f) Inventory in store - US$693,160

688. PAAF seeks compensation for the loss of a variety of inventory in store, including office supplies, spare parts, agricultural chemicals and small tools.

689. The Panel finds that adjustments should be made for overstatement and insufficient evidence.

690. In light of the above, the Panel recommends compensation in the amount of US$584,000 out of the US$693,160 claimed.

## 4. Payment or relief to others - US$8,917,081

### (a) Relief paid to employees - US$8,917,081

691. PAAF seeks compensation in the amount of US$8,917,081 for relief paid to employees.

692. The response of the Government to the Panel's questions regarding the Social Security Fund 179/ states that the amount claimed is based upon the employees' salaries after deduction of the social security contribution. The Panel accepts this statement.

693. As set out at paragraph 36 of the First "F3" Report, and subject to the percentage adjustment set out at paragraph 48 thereof (repeated as paragraphs 36 and 48 of the annex, respectively), the Panel accepts the compensability of such relief paid to employees.

694. The Panel finds that the relief claimed exceeds the amount paid by PAAF to its employees for salaries the employees would have earned, but did not receive, in respect of the occupation and emergency periods and has made an adjustment for overstatement in this regard.

695. In light of the above, the Panel recommends compensation in the amount of US$3,325,000 out of the US$8,917,081 claimed.

### 5. Other losses - US$2,163,838

#### (a) Research studies - US$119,016

#### (b) Study for new Zoo - US$2,044,822

696. PAAF seeks compensation for the loss of two research studies completed prior to Iraq's invasion and occupation of Kuwait, based on the salaries paid to the staff who carried out the research.

697. As set out at paragraphs 23 to 28 above, the Panel recommends that compensation be awarded for the loss of the two research studies. However, adjustments should be made for economies of re-creation and insufficient evidence.

698. PAAF also seeks compensation for costs incurred in commissioning a study for the building of a new Zoo. The proposed site could not be used for the Zoo after liberation as the area was redesignated by the Government for oil development. The Panel finds that the decision taken to redesignate the proposed site for the new Zoo to oil development was not a direct result of Iraq's invasion and occupation of Kuwait and accordingly does not recommend any compensation for the loss of that study.

699. In light of the above, the Panel recommends compensation in the amount of US$29,000 out of the US$2,163,838 claimed.

### 6. Business transaction or course of dealing - US$436,859

#### (a) Zoo entry and quarantine fees - US$436,859 180/

700. Prior to Iraq's invasion and occupation of Kuwait, PAAF generated revenue from Zoo entry admissions and quarantine fees. PAAF claims that between 2 August 1990 and February 1993, the Zoo was closed for repairs and the restocking of animals and that it therefore lost revenue derived from entry admissions until June 1993. In addition, PAAF claims that it lost quarantine fees between 2 August 1990 and July 1991. PAAF valued both elements of this loss based on the estimated revenue it would have earned for the above period, measured by reference to the revenue earned prior to Iraq's invasion and occupation of Kuwait, less any revenue earned over the period claimed.

701. The Panel finds that the loss of revenue is compensable for the period that the revenue was affected as a direct result of Iraq's invasion and occupation of Kuwait, subject to deductions for exceptional post-liberation revenue, for revenue that would have been paid by other Government departments and for saved expenses. 181/ The Panel finds that

the revenue was affected as a direct result of Iraq's invasion and occupation of Kuwait until July 1991 in the case of quarantine fees and to June 1993 in the case of admission fees.

702. The Panel sought information from PAAF as to the costs involved in the generation of its revenue. This disclosed that the expenses that would have been incurred in earning the lost revenue for the relevant periods exceeded that lost revenue.

703. In light of the above, the Panel does not recommend any compensation for the loss of revenue claimed.

### 7. Contract - US$381,639 182/

#### (a) Forestation and preservation areas contract loss - US$381,639

704. After liberation PAAF entered into a contract with a pre-invasion contractor to repair and complete construction of the central nursery. PAAF valued its loss as the difference between the cost PAAF incurred to complete the project and the amount it would have paid under the original contract.

705. The Panel, continuing its approach set out at paragraph 63 of the First "F3" Report, finds that the losses claimed are compensable in so far as they are attributable to the factors set out in that paragraph. The evidence shows that part only of the losses claimed is attributable to the relevant factors.

706. In light of the above, the Panel recommends compensation in the amount of US$363,000 out of the US$381,639 claimed.

## U. Ministry of Interior

### Government Claim No. 57, UNCC Claim No. 5000189

Table 21. Summary Table for Ministry of Interior

| Loss type/Loss element | Amount claimed US$ | Amount recommended US$ | Paragraph references |
|---|---|---|---|
| Real property | 24,518,148 | 18,552,000 | 707-710 |
| Other tangible property | | | |
| a) Coast Guard boats | 35,721,844 | 17,609,000 | 711-715 |
| b) Communications equipment | 29,925,915 | 21,742,000 | 716-718 |
| c) Criminal evidence equipment | 6,061,148 | 4,202,000 | 719-721 |
| d) Computer equipment | 4,946,813 | 1,614,000 | 722-727 |
| e) Traffic department equipment and supplies | 1,791,622 | 1,241,000 | 728-730 |
| f) Office furniture and equipment | 9,372,748 | 6,715,000 | 731-733 |
| g) Warehouse equipment and supplies | 39,649,782 | 26,484,000 | 734-736 |
| Sub-total | 127,469,872 | 79,607,000 | |
| Bank accounts and securities | 1,701,496 | 1,282,000 | 737-740 |
| Public service expenditures | 828,819 | 610,000 | 741-744 |
| Total | 154,518,335 | 100,051,000 | |
| Interest | 24,556,040 | | |

### 1. Real property - US$24,518,148 183/

707. The Ministry of Interior ("MoI") is responsible for policing and law enforcement, including border and immigration controls and Kuwait's Coast Guard, and for the operation of Kuwait's prison system. MoI seeks compensation for real property losses relating to approximately 200 buildings that it claims were damaged or destroyed, and for damage arising due to a lack of maintenance of MoI's buildings during the occupation period.

708. MoI claims the costs incurred in effecting temporary and limited permanent repairs and the costs to be incurred in further replacement and repairs. 184/ The Panel finds that, although nine of the 11 contracts for repair were not awarded using competitive procurement procedures, the costs incurred were reasonable and the absence of such procedures did not lead to increased costs.

709. The Panel finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

710. In light of the above, the Panel recommends compensation in the amount of US$18,552,000 out of the US$24,518,148 claimed.

### 2. Other tangible property - US$127,469,872

#### (a) Coast Guard boats - US$35,721,844 185/

711. MoI seeks compensation for 48 Coast Guard boats that it claims were lost, damaged or destroyed, including landing craft, border control craft, rescue boats and speed boats. MoI asserts that 28 boats were damaged and that 20 boats were lost, destroyed or damaged beyond repair. 186/ In addition, MoI claims compensation for lost spare parts.

712. In relation to those boats MoI asserts were damaged beyond repair, the Panel notes that MoI has not adjusted its claim to take account of the residual value of the equipment contained on the boats. The Panel finds that such account is warranted and has therefore made an adjustment in this regard.

713. The Panel notes that a further 17 speedboats were purchased for MoI pursuant to KERP, that the cost of those speedboats is being claimed separately, 187/ and that MoI adjusted its claim to take account of its estimate of their residual value. The Panel finds that MoI underestimated the residual value of those boats and therefore that an adjustment should be made for incorrect valuation of KERP assets.

714. The Panel finds that further adjustments should be made for saved expenses, overstatement and insufficient evidence.

715. In light of the above, the Panel recommends compensation in the amount of US$17,609,000 out of the US$35,721,844 claimed.

#### (b) Communications equipment US$29,925,915 188/

716. MoI seeks compensation for the loss of communications equipment, including cables, spare parts and inspection equipment. 189/

717. The Panel finds that adjustments should be made for enhancement, inadequate accounting for depreciation, saved expenses and insufficient evidence.

718. In light of the above, the Panel recommends compensation in the amount of US$21,742,000 out of the US$29,925,915 claimed.

### (c) Criminal evidence equipment - US$6,061,148

719. MoI seeks compensation for the loss of criminal evidence equipment, including scientific analysis equipment, desalination equipment and X-ray equipment.

720. The Panel finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

721. In light of the above, the Panel recommends compensation in the amount of US$4,202,000 out of the US$6,061,148 claimed.

### (d) Computer equipment - US$4,946,813 190/

722. MoI seeks compensation for computer equipment losses, comprising mainframe computers and computer peripherals. 191/

723. After liberation, MoI decided to centralise its pre-invasion computer system, using two mainframe computers, one (an IBM ES/9000-480) purchased pursuant to KERP, instead of six mainframe computers used prior to Iraq's invasion and occupation of Kuwait. The Panel finds that MoI's decision to centralise its computer system was not a direct result of Iraq's invasion and occupation of Kuwait, and therefore that the costs of retaining consultants under three contracts to implement the decision are not compensable.

724. MoI also seeks compensation for 10 per cent of the purchase price of a mainframe computer, purchased in Saudi Arabia during the occupation period as MoI believed that installation of the IBM ES/9000-480 it was to receive pursuant to KERP could have been delayed. 192/ MoI found upon its return to Kuwait that the computer it purchased was not required and it was neither installed nor used. The Panel finds that the purchase of the mainframe computer was not a direct result of Iraq's invasion and occupation of Kuwait and therefore does not recommend any compensation in relation to it.

725. The Panel finds that the remaining costs incurred are compensable, but that adjustments should be made for enhancement, saved expenses and insufficient evidence.

726. As a result of the adjustment made in respect of enhancement by the Panel in the preceding paragraph, the Panel finds that the deduction MoI applied against the amount claimed in respect of depreciation exceeds the deduction warranted, in that the percentage deduction should be applied to

a lower base cost. The Panel has therefore re-calculated the deduction to be applied for depreciation.

727. In light of the above, the Panel recommends compensation in the amount of US$1,614,000 out of the US$4,946,813 claimed.

### (e) Traffic department equipment and supplies - US$1,791,622

728. MoI seeks compensation for the loss of traffic department equipment and supplies, including maps and traffic signs.

729. The Panel finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

730. In light of the above, the Panel recommends compensation in the amount of US$1,241,000 out of the US$1,791,622 claimed.

### (f) Office furniture & equipment - US$9,372,748

731. MoI seeks compensation for office furniture and equipment losses, including desks, chairs, shelves, cabinets, photocopiers, fax machines and typewriters. 193/

732. The Panel finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

733. In light of the above, the Panel recommends compensation in the amount of US$6,715,000 out of the US$9,372,748 claimed.

### (g) Warehouse equipment and supplies - US$39,649,782 194/

734. MoI seeks compensation for losses of warehouse equipment and supplies including firearms, ammunition, airport security equipment and uniforms. 195/ The Panel has considered the value of the items lost based on MoI's pre-invasion financial statements due to the loss of most of its pre-invasion invoices, and stock and other records. The Panel therefore finds that an adjustment should be made for insufficient evidence.

735. The Panel finds that further adjustments should be made for overstatement and inadequate accounting for depreciation.

736. In light of the above, the Panel recommends compensation in the amount of US$26,484,000 out of the US$39,649,782 claimed.

### 3. Bank accounts and securities - US$1,701,496

737. MoI claims compensation for cash taken from its various safes, including those located in the General Financial Department. MOI asserts that cash in the safes typically comprised monthly salaries, cash from the collection of fees for traffic fines and fines imposed by the Immigration Department, cash advances for employees going on leave and deposits from persons involved in accidents. Applying the principles set out at paragraphs 406 of the First "F3" Report, the Panel finds that the claim is compensable subject to there being probative evidence, such as contemporaneous records or witness testimony, as to amounts ordinarily held in the safes by MoI. 196/

738. The Panel finds that adjustments should be made for incorrect method of valuation and insufficient evidence.

739. MoI further claims that the cash lost included an amount of Lebanese lire deposited as security by a litigant involved in a civil action before the domestic courts. Following its investigations, the Panel finds that although the civil action was concluded in June 1994 in favour of the depositor, MoI has not reimbursed the depositor. In the circumstances, the Panel finds that MoI has not suffered a loss and so does not recommend any compensation in respect of the Lebanese lire lost.

740. In light of the above, the Panel recommends compensation in the amount of US$1,282,000 out of the US$1,701,496 claimed.

### 4. Public service expenditures - US$828,819 197/

741. MoI asserts that it incurred a variety of expenses in establishing and operating two emergency offices in Saudi Arabia at Dammam and Jeddah from October 1990 until April 1991. MoI claims that these offices were necessary in order that its Computer Centre could create and maintain a database of Kuwaiti citizens living abroad during Iraq's invasion and occupation of Kuwait and to plan for the emergency recovery efforts following liberation.

742. The Panel, applying the principles set out at paragraph 79 of the First "F3" Report (repeated as paragraph 79 of the annex), finds that MoI's decision to establish and operate the offices for the period was reasonable in the circumstances. Accordingly, the Panel finds that the reasonable costs of so doing are compensable, subject to any deductions for expenses that would ordinarily have been incurred in MOI's operations in Kuwait.

743. The Panel finds that adjustments should be made for inadequate accounting for residual value.

744. In light of the above, the Panel recommends compensation in the amount of US$610,000 out of the US$828,819 claimed.

## V. Directorate General of Civil Aviation

### Government Claim No. 59, UNCC Claim No. 5000191

Table 22. Summary Table for Directorate General of Civil Aviation

| Loss type/Loss element | Amount claimed US$ | Amount recommended US$ | Paragraph references |
|---|---|---|---|
| Real property | 8,528,168 | 5,427,000 | 745-748 |
| Other tangible property | 93,418,606 | 23,868,000 | 749-751 |
| Total | 101,946,774 | 29,295,000 | |
| Interest | 16,201,720 | | |

### 1. Real property - US$8,528,168

#### (a) Terminal 1, communications centre and other buildings - US$8,528,168 198/

745. The Directorate General of Civil Aviation ("DGCA") is an independent agency of the Government and is responsible for all aspects of civil aviation in Kuwait, including the operation of Kuwait International Airport (the "Airport"). DGCA claims that the Airport's Terminal One was destroyed by fire and explosives and that other buildings, including the communications centre and the Airport security buildings, were severely damaged or destroyed.

746. DGCA seeks compensation for the replacement costs for the above buildings, estimated as an average cost per square metre, to which a measure of depreciation was applied. The Panel finds that adjustments should be made for overstatement, saved expenses and insufficient evidence.

747. Terminal One, the communications centre and two smaller buildings, namely, the deluge building and the engine test building, required demolition after liberation. DGCA claims the costs incurred under two contracts for such demolition. The Panel finds that, although one of the contracts for demolition was not awarded using competitive procurement procedures, the costs incurred were reasonable and the absence of such procedures did not lead to increased costs. However, the Panel finds that an adjustment should be made for insufficient evidence.

748. In light of the above, the Panel recommends compensation in the amount of US$5,427,000 out of the US$8,528,168 claimed.

### 2. Other tangible property - US$93 418,606

Communications equipment - US$92,230,467

### Meteorological equipment - US$1,188,139

749. DGCA seeks compensation for the loss of communications and meteorological equipment, including long range radar stations, a receiver station, a transmission station, the control centre, observation stations, a high frequency receiver, a station used for receiving signals regarding humidity, temperature and pressure, and a hydrogen generator. Other equipment was damaged. The Panel notes that some of the equipment has been replaced, but that the specifications of the replacement items differed from the items lost. DGCA based its claim on the estimated cost of replacing all the equipment lost, but was unable to provide details of the equipment yet to be purchased, nor a breakdown or particulars of the estimated cost. 199/

750. The Panel finds that it is unable precisely to quantify the losses sustained and that an adjustment should be made for insufficient evidence.

751. In light of the above, the Panel recommends compensation in the amount of US$23,868,000 out of the US$93,418,606 claimed.

## V. SUMMARY OF RECOMMENDATIONS

752. The following is a summary showing, for each second instalment claim, the principal claim amount and the Panel's recommended award.

Table 23. Summary of the principal claim amount and the Panel's recommendation for each second instalment claim

| Claimant | Principal claim amount (US$) | Recommendation (US$) |
|---|---|---|
| Ministry of Finance - Kuwait Emergency and Recovery Program | 533,472,120 | 432,309,059 |
| Kuwait Institute for Scientific Research | 390,343,692 | 104,699,000 |
| Ministry of Public Works - Bayan Palace, Amiri Diwan, Telecommunications Tower, Audit Bureau, and MEW-MPW Headquarters construction and repair projects | 232,874,040 | 105,128,000 |
| Ministry of Electricity and Water - Stores Department, Communications Systems, Emergency Electrical Department, Primary Substations, and Water Division | 362,234,083 | 215,702,865 |
| Ministry of Defense - Navy Fast Attack Craft | 483,440,514 | 63,957,000 |
| Ministry of Electricity and Water - Power Plants, Underground Cables and Overhead Lines Maintenance Department, Electrical Network Projects Construction Department, Shuwaikh Distillation Facilities, Salaries, and Computer Center | 606,672,157 | 321,455,000 |
| Ministry of Information - Dar al-Athar al-Islamiyya Collection | 61,036,607 | 20,770,000 |
| Ministry of Public Works - Mishref Neighborhood Center, Kuwait University, Old Sief Palace, Government Testing Center, Computers, Stores, Equipment, Furniture, Salaries | 79,446,364 | 25,487,000 |
| Ministry of Defense - Reconstruction of Naval Base and Support Facilities | 63,453,966 | 39,946,000 |

| | | |
|---|---|---|
| Kuwait University - Tangible Property Losses and Payment or Relief to Others | 264,379,603 | 123,816,000 |
| Ministry of Oil | 7,882,908 | 2,990,048 |
| Kuwait Municipality | 196,459,271 | 105,202,000 |
| Ministry of Public Works - Buildings Construction Department, Local Roads Construction Department, Motorways Department, Sanitation Department, Buildings and Roads Maintenance, and Bubiyan Bridge | 177,026,963 | 64,849,000 |
| Ministry of Health | 422,193,464 | 196,223,000 |
| Ministry of Planning | 34,053,732 | 13,699,000 |
| Environment Protection Council | 4,136,255 | 2,467,000 |
| Ministry of Communications - Real and Tangible Property, Contract Losses, Payment or Relief to Others | 229,638,928 | 123,915,000 |
| Public Authority for Applied Education and Training | 120,776,864 | 66,519,326 |
| Public Authority for Agriculture Affairs and Fish Resources | 46,921,883 | 19,654,576 |
| Ministry of Interior - Buildings, Coast Guard, Communications Equipment, Criminal Evidence Equipment, Computer Equipment, Traffic Department, Office Furniture and Equipment, Warehouses, Currency, and Emergency Offices | 154,518,335 | 100,051,000 |
| Directorate General of Civil Aviation - Terminal 1, Communications Center and Other Buildings, Communications Equipment and Meteorological Equipment | 101,946,774 | 29,295,000 |
| Total | 4,572,908,523 | 2,178,134,874 |

Geneva, 13 September 2000

(Signed) L. Yves Fortier, Q.C.
Chairman

(Signed) Andrew Jacovides
Commissioner

(Signed) Reiner Soll
Commissioner

## Notes

1/ The Panel's report and recommendations in relation to the first instalment of the "F3" claims (the "first instalment claims") can be found in the "Report and recommendations made by the Panel of Commissioners concerning the first instalment of "F3" claims" (S/AC.26/1999/24) (the "First "F3" Report").

2/ A text of which is annexed to decision 10 (S/AC.26/1992/10).

3/ Being the coalition of States assembled in response to Iraq's invasion and occupation of Kuwait.

4/ In the "Report and recommendations of the Panel of Commissioners appointed to review the well blowout control claim (the "WBC Claim")" (S/AC.26/1996/5/Annex) (the "WBC Report"), the Panel of Commissioners, in interpreting this phrase, found that any bombing of oil wells by the Allied Coalition Forces did not break the chain of causation between Iraq's invasion and occupation of Kuwait and the losses claimed in relation to the damage to those wells (see paragraph 86 of the WBC Report).

5/ See, for example, the claims of the Ministry of Defense considered at paragraphs 258 to 274 and 374 to 380.

6/ S/AC.26/Dec.19 (1994).

7/ It should be noted that, in a number of cases, the Panel has recommended adjustments to the amounts claimed for other tangible property losses to reflect the pilferage that would have occurred even in the absence of Iraq's invasion and occupation of Kuwait (see, for example, paragraphs 228 and 352). Such pilferage is not a direct loss as a result of Iraq's invasion and occupation of Kuwait.

8/ The Panel requested information from relevant claimants as to the reconstruction and repair work undertaken since the submission of their claims and has taken account of the responses received.

9/ Including research reports, computer files, analysis and specimens relating to scientific projects, and computer software.

10/ See paragraph 24 of the First "F3" Report (repeated as paragraph 24 of the annex) and paragraphs 137 to 138 of the First "F3" Report.

11/ UNCC Claim No. 5000038.

12/ Ministry of Electricity and Water and Kuwait Institute for Scientific Research.

13/ See further paragraphs 235, 241, 280 and 286.

14/ See further paragraphs 170 to 176 and 240.

15/ See further paragraphs 358 and 359 of the First "F3" Report, at which the Panel considered a claim for salaries paid to employees referable to the time they spent on training. The claimant was operated as a commercial entity and had hired these employees to replace those who left Kuwait as a direct result of Iraq's invasion and occupation of Kuwait and did not return after liberation. The Panel found that no compensation should be awarded because the loss was subsumed in the claimant's loss of revenue claim.

16/ With some adjustments to reflect post-liberation works that constituted enhancements or other additional costs that were not a direct result of Iraq's invasion and occupation of Kuwait.

17/ The Panel has instructed the secretariat to provide details of its recommendations to those Panels of Commissioners that are reviewing the contractors' claims.

18/ In cases where the claimant intends to enter into a post-liberation contract in the future, the Panel has calculated its price at such time as it would be reasonable, in all the circumstances, to expect it to have been entered into.

19/ Provided that this amount does not exceed the amount claimed.

20/ Kuwait Institute for Scientific Research, see further paragraphs 156 to 164.

21/ See further paragraph 156.

22/ See further paragraph 57 of the First "F3" Report (repeated as paragraph 57 of the annex).

23/ The receivable may be claimed in part as a loss of property (such as the underlying product or information) and/or in part as a loss of revenue.

24/ This programme is described at paragraph 52.

25/ The assumptions were as follows:

(a) there would be a protracted siege of Kuwait City;

(b) the fighting in Kuwait City would result in widespread disruption of food and water distribution, medical services and other essential public services;

(c) there would be a large number of civilian casualties that could not be accommodated in U.S. Army hospitals; and

(d) the population of Kuwait City would be approximately 800,000 at liberation and KERP would need to provide sufficient food, water, health supplies and other goods and services to support that population for three months.

26/ The Panel notes that certain Consumed Goods, such as food, that were not in fact consumed by the end of the emergency period, retained no value.

27/ That is, that:

(a) the Receiving Agency has deducted the residual value of the Transferred Goods from its real and/or other tangible property loss claim; or

(b) the Receiving Agency has deducted the value of its post-liberation inventory (which includes the goods received pursuant to KERP) from the value of its pre-invasion inventory; or

(c) if the Receiving Agency received Transferred Goods of greater value, or a longer remaining useful life, than those lost as a direct result of Iraq's invasion and occupation of Kuwait, an appropriate adjustment has been made in the present claim.

28/ The Panel issued Procedural Orders Nos. 6, 45 and 46 in September 1999, March 2000 and May 2000, respectively, to elicit such support.

29/ See further the explanation of the shorthand expression "incorrect valuation of KERP assets" at paragraph 47. Such adjustments are applied at paragraphs 358, 437, 507, 511 and 713. The Panel has not otherwise identified the Receiving Agencies, as many claimants were such Receiving Agencies.

30/ The Panel also finds that those purchases made at prices higher than the norm were of such urgency that the claimant could not reasonably be required to wait until prices had returned to normal patterns.

31/ The amount referable to the claim of the Kuwait Public Transportation Co. is US$6,808,000 and that to the claim of the Kuwait Ports Authority is US$379,000.

32/ The only exception was one sub-contract for the transport of some mobile generators by air. The Panel finds that, in light of the fact that only one type of aeroplane could accommodate the generators, it was reasonable for the contractor to choose the only sub-contractor that could provide that type of aeroplane.

33/ The Farah report at paragraph 477 noted that:

> "Virtually all [of KISR's] buildings have been defiled and minor damage inflicted to finishes, as well as to electrical and plumbing systems ... Fires were set selectively in both the University and the Kuwait Institute for Scientific Research. Gunfire was intentionally aimed at the latter's main building, causing some structural damage. Restoring the Institutes's building will require around 50 per-cent of replacement value for burned areas and blast-damaged areas and 10 per-cent elsewhere".

34/ Paragraph 3(b) of Governing Council decision 13 (S/AC.26/1992/13) provides that "When the Commission learns, either through information provided by the claimant or through other means, and before paying compensation from the Fund, that a claimant in categories "C", "D", "E" and "F" has received compensation elsewhere for the same loss, the amount already received will be deducted from the compensation to be paid from the Fund to that claimant for the same loss".

35/ The Farah report at paragraph 473 provided that "The entire libraries of [KISR] and all the nine university faculties, totalling over 300,000 volumes and 8,300 periodical titles and a quarter of a million technical reports on microfiche, have been removed, reportedly by truck to Iraq." And at paragraph 475 "Overall, there has been a mass removal of equipment. The June 1990 book value of that belonging to the Kuwait Institute for Scientific Research was KD 22 million, and the University inventory is far larger. The removal was systematic."

36/ The Farah report provided at paragraph 473 that "Twenty years of accumulated research data by the Kuwait Institute for Scientific Research researchers and the University professors have been taken away, burned or reduced to litter. The mission's inspection showed that lecture notes, research data and personal technical libraries are missing."

37/ See further endnote 23 of the First "F3" Report (repeated as endnote 23 of the annex). With the exception that compensation will be recommended for any portion of the cost of the post-liberation contract referable to repairing damage that was a direct result of Iraq's invasion and occupation of Kuwait, subject to verification and valuation.

38/ The Panel has therefore not found it necessary to consider whether such debts would have been written off under international accounting practice.

39/ See further paragraphs 51 to 58, 433 and 434 of the First "F3" Report.

40/ The amount claimed is non-material.

41/ Being Jordanian, Palestinian, Sudanese and Yemeni employees.

42/ The amount claimed in respect of incentive bonuses is non-material.

43/ See further paragraph 45.

44/ Including both the employer's and the employees' contributions.

45/ With some adjustments to reflect post-liberation works that constituted enhancements or other additional costs that were not a direct result of Iraq's invasion and occupation of Kuwait.

46/ This is the same rationale as that applied by the Panel to claims by tenants for repairs performed by them which were properly the responsibility of the landlord (see paragraph 68 of the First "F3" Report (repeated as paragraph 68 of the annex)).

47/ The repairs to the other residences were performed by KERO. The Panel is satisfied that there is no duplication.

48/ Including the hosting of conferences and receptions by the Amir of Kuwait.

49/ Applying the Panel's approach to claims for the cost of temporary repairs and for the cost of renting temporary premises (see paragraphs 72 to 77 of the First "F3" Report (repeated as paragraphs 72 to 77 of the annex)).

50/ Following the Panel's approach to the claim of the Civil Service Commission for temporary furniture (see paragraphs 296 to 297 of the First "F3" Report).

51/ The tangible property lost from the other residences was replaced by KERO and the Amiri Diwan. The Panel is satisfied that there is no duplication.

52/ Part of the amount claimed is non-material.

53/ Part of the amount claimed is non-material.

54/ The amount claimed is non-material.

55/ Part of the amount claimed is non-material.

56/ With some adjustments to reflect post-liberation works that constituted enhancements or other additional costs that were not a direct result of Iraq's invasion and occupation of Kuwait.

57/ Part of the amount claimed is non-material.

58/ See further paragraph 63 of the First "F3" Report (repeated as paragraph 63 of the annex).

59/ Part of the amount claimed is non-material.

60/ Except for one contract in relation to initial site restoration for one of the projects.

61/ The Panel finds, as more fully set out at paragraphs 374 to 380, that losses resulting from the destruction of the facilities at the Base are direct losses.

62/ This is the exception to the general findings at paragraphs 15 and 16.

63/ The Panel also finds that the same conclusion applies to the works planned for the Istiglal.

64/ Part of the amount claimed is non-material.

65/ In relation to the power station that is alleged to have been destroyed, MEW's claim is only for dismantling and debris removal costs and the cost of repairs to some equipment related to the production of desalinated water (see paragraphs 290 to 293).

66/ See the general discussion on depreciation at paragraphs 17 to 19.

67/ Part of the amount claimed is non-material.

68/ At paragraph 66 of the First "F3" Report (repeated as paragraph 66 of the annex), the Panel found that damage to buildings that are not to be rebuilt is compensable. As the repairs in this claim were, in fact, undertaken, the Panel finds that the appropriate measure of damage is the costs thereby incurred.

69/ Except for some equipment related to the desalination process which is claimed under "Power plants" considered at paragraphs 275 to 278.

70/ The Panel has made a notional addition to correct an understatement that it found in reviewing this claim.

71/ Part of the amount claimed is non-material.

72/ This is an application of the Panel's finding at paragraphs 74 and 75 of the First "F3" Report (repeated as paragraphs 74 and 75 of the annex) that compensation should be provided for the cost of renting temporary premises while damaged premises were repaired.

73/ Part of the amount claimed is non-material.

74/ Except for those items on exhibition outside of Kuwait.

75/ The Panel's recommendation has taken these items into account in the manner set out at paragraph 44.

76/ MoInf was found liable to pay, and has paid, US$60,379,745 to the private owners of the Collection. This is equal to the sum of the amounts claimed by MoInf for tangible property losses and for the losses discussed at paragraphs 328 to 333.

77/ This is because the seller must incur, amongst other things, dealer mark-up and shipping and conservation costs.

78/ As there is no evidence that any attempt has been, or will be, made to replace the lost pieces.

79/ Except that the valuation was by reference to the seller's price.

80/ The Panel does not recommend any compensation in relation to the retrieval of a small number of the pieces which were owned by the private owners of the Collection, but were not part of the Collection. An adjustment has been made to reflect that portion of the amount claimed that is referable to the retrieval of such pieces.

81/ At paragraph 24 of the First "F3" Report (repeated as paragraph 24 of the annex), the Panel found that compensation should be provided for the reasonable costs of mitigating the damages resulting from Iraq's invasion and occupation of Kuwait.

82/ The amount claimed is non-material.

83/ With some adjustments to reflect post-liberation works that constituted enhancements or other additional costs that were not a direct result of Iraq's invasion and occupation of Kuwait.

84/ The Panel has assessed the unit price by reference to the time at which it would have been reasonable, in all the circumstances, to place the replacement order.

85/ The Panel's recommendation has taken some items of heavy equipment, which were returned pursuant to UNROP, into account in the manner set out at paragraph 44.

86/ MPW does not claim loss of revenue for the period 2 August 1990 until 31 May 1991 because it asserts that to do so would be to duplicate its claim for relief paid to employees.

87/ See further paragraphs 51 to 58, 433 and 434 of the First "F3" Report.

88/ Part of the amount claimed is non-material.

89/ "Base" is defined at paragraph 265.

90/ Iraq asserted in its response to Procedural Order 1 that various items were returned through UNROP, but provided no details of such items. The Panel does not therefore recommend any adjustment to the amount claimed in this regard.

91/ MoD notes that the contracts do not cover all repairs, and that some items were to be repaired or replaced as variations to those contracts.

92/ Some of the repairs were not completed until October 1995.

93/ The Farah report at paragraphs 473, 474 and 477 noted that:

> "...The entire libraries of ... all the nine university faculties, totalling over 300,000 volumes and 8,300 periodical titles and a quarter of a million technical reports on microfiche, have been removed, reportedly by truck to Iraq. The books, manuscripts and files of four widely read journals published by the Faculties of Arts and Law have been plundered or destroyed. ...
>
> The sophisticated equipment used for generating the research data is also gone. ... [The losses include] a large VAX machine from the Central Services of the University ... Smaller mainframes have been taken from the Faculties of Science and Engineering and complete specialized teaching laboratories in psychology, languages, commerce and geography are gone. Costly spectrometers, centrifuges and virtually every other sophisticated machine and instrument have been

> taken from the science and engineering laboratories, while all faculties together have lost more than 1,000 personal computers. Typewriters were removed on a massive scale ...
>
> All modern furniture has been taken from classrooms, offices and meeting rooms. Even non-academic spaces were plundered. The University sports stadium had 20,000 plastic seats removed."

94/ The amount claimed is non-material.

95/ See further paragraph 45.

96/ The Panel has made an adjustment which is de minimis as defined in paragraph 48 for overstatement.

97/ The amount claimed is non-material.

98/ See further paragraph 138 of the First "F3" Report.

99/ See further paragraph 45.

100/ This is a negative amount because the Municipality asserts that it received vehicles pursuant to KERP of a value in excess of those that it lost as a direct result of Iraq's invasion and occupation of Kuwait.

101/ Part of the amount claimed is non-material.

102/ The Panel notes that not all of the tenants ceased doing business for the whole of the occupation and emergency periods.

103/ The Panel finds that the period claimed is the period that revenue from the slaughterhouses was affected as a direct result of Iraq's invasion and occupation of Kuwait.

104/ See further paragraphs 51 to 58, 433 and 434 of the First "F3" Report.

105/ All constituent parts are non-material items.

106/ The Municipality asserts in its claim that three of the nine contracts were abandoned after liberation and claims the amount paid for the work performed up to Iraq's invasion and occupation of Kuwait in respect of them. However, in its response to Procedural Order 29 issued in November 1999, the Municipality submitted that the work under one of these three contracts was, in fact, continued by two contracts entered into in late 1991 and 1992, respectively. The Panel accepts this assertion. The Panel's recommendation for this contract is, however, limited to the amount initially claimed by the Municipality.

107/ A contract for the construction of a funeral parlour on Failaka Island was abandoned as a result of the Government's decision to evacuate Failaka Island. A contract for the construction of prefabricated buildings at Wafra was abandoned because the buildings were completely destroyed and because of the Municipality's decision not to replace its lost heavy equipment.

108/ Provided that this amount does not exceed the amount claimed.

109/ With some adjustments to reflect post-liberation works that constituted enhancements or other additional costs that were not a direct result of Iraq's invasion and occupation of Kuwait.

110/ This is the same rationale as that applied by the Panel to claims by tenants for repairs performed by them which were properly the responsibility of the landlord (see paragraph 68 of the First "F3" Report (repeated as paragraph 68 of the annex)).

111/ Provided that this amount does not exceed the amount claimed.

112/ This is the same rationale as that applied by the Panel to claims by tenants for repairs performed by them which were properly the responsibility of the landlord (see paragraph 68 of the First "F3" Report (repeated as paragraph 68 of the annex)).

113/ With the exception of a contract for a forestry irrigation project for which the saved expenses were calculated for the period 2 August 1990 to 31 May 1991.

114/ The Panel finds that there is no duplication of the claim of Kuwait Municipality considered at paragraphs 422 to 424.

115/ The post-liberation contract with the consultant was entered into at the same price as the pre-invasion contract.

116/ All constituent parts are non-material items.

117/ The Panel notes that the Farah report, at paragraphs 426 and 435, describes some of MoH's losses:

> "The inspection by the mission showed that there was not a single room of [the building of the Ministry, situated on the sea-front] left untouched: ceilings had been destroyed, files and documents had been strewn on the floors, corridors and staircases. Computers and typewriters had been taken away ...
>
> The Infectious Diseases Hospital is a 220-bed facility ... [t]wo of its wards were hit by bombs, causing structural damage and loss of equipment".

118/ The Panel notes that repairs to MoH's property were also carried out by KERO and is satisfied that such repairs are not claimed by MoH.

119/ Part of the amount claimed is non-material.

120/ The Panel notes that certain replacement medicines were purchased pursuant to KERP and is satisfied that they have been accounted for by MoH.

121/ Part of the amount claimed is non-material.

122/ The Farah report described the loss of significant quantities of medical equipment. For example, at paragraph 431, it is noted that "There are six general hospitals in Kuwait ... [T]he extensive and modern equipment of these hospitals, particularly in the electro-medical field, was either removed from the country, or exposed to damage as a result of the lack of maintenance and skilled personnel to operate it."

123/ The amount claimed is non-material.

124/ See further the discussion of the KERP claim commencing at paragraph 52.

125/ Part of the amount claimed is non-material.

126/ The Panel's recommendation has taken these items into account in the manner set out at paragraph 44.

127/ The Panel notes that certain items were replaced pursuant to KERP and is satisfied that they have been accounted for by MoH.

128/ Part of the amount claimed is non-material.

129/ The amount claimed is non-material.

130/ Part of the amount claimed is non-material.

131/ The Panel finds that the proportion of former employees who failed to return after liberation did not vary significantly from nationality to nationality.

132/ It should be noted that the cost incurred by the Government in providing medical treatment in countries other than Kuwait during the occupation period was claimed by the Ministry of Finance in Claim No. 5000112 (see paragraphs 188 to 211 of the First "F3" Report).

133/ See further paragraph 45.

134/ Part of the amount claimed is non-material.

135/ The Panel notes that certain repairs to MoP's real property were effected by and claimed for by KERO and is satisfied that there is no claim for such repairs by MoP.

136/ Part of the amount claimed is non-material.

137/ The amount claimed is non-material.

138/ Part of the amount claimed is non-material.

139/ The work boats and control boats were used primarily to clean up oil spills and the surveillance boat was used for monitoring water pollution.

140/ The Panel has taken the work boats into account in the manner set out at paragraph 44 and in so doing has made a further adjustment to the amount claimed.

141/ The amount claimed is non-material.

142/ The amount claimed is non-material.

143/ The Panel is satisfied that there is no duplicate claim for the chromatograph.

144/ The amount claimed is non-material.

145/ Part of the amount claimed is non-material.

146/ The Panel has found an arithmetical error in the amounts claimed in respect of the South Subahiya exchange, and has made a notional addition to the amount claimed so as to correct that error. The Panel also notes that repairs to another main centre, the Telecom Centre (known as the TEC building), were carried out by KERO and MPW and pursuant to KERP and is satisfied that there is no claim for such repairs contained in this claim.

147/ The Panel notes that certain repairs to the microwave links were carried out pursuant to KERP and is satisfied that MoC has not claimed for such repairs.

148/ The Panel finds, however, that MoC would have undertaken that conversion at dates earlier than set out in its claim and therefore that the useful life of certain parts of the network was overstated.

149/ MoC's claim includes the cost of temporary repairs that were not intended to be permanent, but the Panel notes that such repairs have not in fact been replaced by permanent repairs.

150/ Known as transmultiplexers.

151/ The Panel has identified an arithmetical error in the amounts presented and has corrected the error so that the amount claimed is correctly stated as US$24,221,209. Part of the amount claimed is non-material.

152/ In a supplemental submission for this claim, filed in March 1999, MoC reduced the amount claimed for other tangible property by US$1,362,804, so as to account for property returned by Iraq to MoC through UNROP. Having reviewed the nature of the property returned, the Panel has applied the reduction against this loss element. The Panel has made an adjustment to the amount of the UNROP deduction so as to conform the exchange rate used by MoC in the reduction calculation to that used in the claim itself.

153/ The Panel has identified an arithmetical error in the amounts presented and has corrected the error so that the amount claimed is correctly stated as US$612,947.

154/ Some items were replaced pursuant to KERP and the Panel is satisfied that such items are not claimed by MoC.

155/ The Panel notes that MoC's lost vehicles were in part replaced pursuant to KERP and are in part claimed in MoC's claim number 5000045.

156/ All constituent parts are non-material items.

157/ The Panel considered the response to Procedural Order 30 issued in November 1999 in making this finding.

158/ Provided that this amount does not exceed the amount claimed.

159/ See further paragraph 45.

160/ See further paragraphs 17 to 19.

161/ The amount claimed is non-material.

162/ Part of the amount claimed is non-material.

163/ All constituent parts are non-material items.

164/ PAAET has shown that the failure of the majority of the employees to return was due to Iraq's invasion and occupation of Kuwait and, therefore, that the reasonable costs of locating and attracting new employees to replace these employees was a direct loss. The remaining employees who failed to return were of Jordanian, Palestinian, Yemeni or Sudanese origin. Having considered all the evidence and information available, the Panel has concluded that there is insufficient evidence to demonstrate that the failure of these employees to return to Kuwait was a direct result of Iraq's invasion and occupation of Kuwait. The Panel therefore does not recommend any compensation for the amounts claimed for locating and attracting their replacements.

165/ The course, which was given in the summer of 1992, covered the studies for the academic year 1991/92 because that academic year had been spent studying the material from the lost 1990/91 academic year.

166/ See further paragraphs 51 to 58, 433 and 434 of the First "F3" Report.

167/ The Panel finds that there is insufficient evidence to show that the fall in this revenue to zero for the year ended 30 June 1993 was a direct result of Iraq's invasion and occupation of Kuwait.

168/ The amount claimed is non-material.

169/ See further paragraph 45.

170/ The amount claimed is non-material.

171/ In its response to Procedural Order 1, Iraq asserted that the employees could have returned to Kuwait using the return component of tickets issued to them by the Government as part of the employees' home leave entitlements under their employment contracts. Iraq did not provide any support for this assertion and, in addition, the Panel notes that it would be unlikely that any tickets issued before 2 August 1990 would still have been valid at the end of the emergency period.

172/ Part of the amount claimed is non-material.

173/ Part of the amount claimed is non-material.

174/ The Panel finds that the saved expenses exceed the amount claimed for the Zoo animals but not for the Arabian horses.

175/ The amount claimed is non-material.

176/ Part of the amount claimed is non-material.

177/ Part of the amount claimed is non-material.

178/ The amount claimed is non-material.

179/ See further paragraph 45.

180/ Part of the amount claimed is non-material.

181/ See further paragraphs 51 to 58, 433 and 434 of the First "F3" Report.

182/ The amount claimed is non-material.

183/ Part of the amount claimed is non-material.

184/ The Panel notes that certain repairs to MoI's buildings were carried out in the first year following liberation by KERO and is satisfied that MoI has not claimed for such repairs.

185/ Part of the amount claimed is non-material.

186/ The Panel's recommendation has taken 13 of these boats, which were returned pursuant to UNROP, into account in the manner set out at paragraph 44.

187/ See further the discussion of the KERP claim commencing at paragraph 52.

188/ Part of the amount claimed is non-material.

189/ The Panel notes that certain equipment was replaced pursuant to KERP and is satisfied that MoI has not claimed for such equipment.

190/ Part of the amount claimed is non-material.

191/ The Panel notes that certain computer equipment was purchased for MoI pursuant to KERP and is satisfied that MoI has not claimed for such computer equipment.

192/ The amount claimed for the purchase of this mainframe computer falls below the level of materiality adopted by the Panel.

193/ The Panel notes that certain equipment was purchased for MoI pursuant to KERP and is satisfied that MoI has not claimed for such equipment.

194/ Part of the amount claimed is non-material.

195/ The Panel notes that certain equipment was replaced pursuant to KERP and is satisfied that MoI has not claimed for such equipment.

196/ In its original claim filed in 1994, MoI valued its loss on the basis of its cash balance as of 30 June 1990, but later stated that its claim should be measured by reference to the estimated balance as at 31 July 1990 (thereby decreasing the amount stated to have been lost). The Panel has taken at its starting point such lower value.

197/ Part of the amount claimed is non-material.

198/ Part of the amount claimed is non-material.

199/ The Panel notes that certain repairs and replacements were carried out by KERO and pursuant to KERP and is satisfied that they are not claimed by DGCA.

## Annex

## RE-STATEMENT OF SECTIONS II, III, IV AND V OF THE FIRST "F3" REPORT (SEE PARAGRAPH 7 OF THIS REPORT)

## II. PROCEDURAL HISTORY

### A. The nature and purpose of the proceedings

6. In undertaking its review of the first instalment claims, the Panel has borne in mind:

(a) the status and functions of the Commission;

(b) its claims review processes, which are documentary rather than oral, and inquisitorial rather than adversarial; and

(c) the Panel's function to provide an element of due process in the review of claims filed with the Commission.

7. The Panel has, like other panels, carried out a thorough and detailed factual and legal review of these claims, performing the investigative role incumbent on the panels in the claims review process.

### B. The procedural history of the claims

8. Prior to the formal submission of the first instalment claims to the Panel, the secretariat of the Commission (the "secretariat") performed a detailed review of these claims and determined, in accordance with articles 14 and 15 of the Rules, that each of the claims complied with the formal and procedural requirements of the Commission. The review also demonstrated that the complex and technical nature of a number of the elements in the claims would require the Panel to make use of independent loss adjusters and accountants as expert consultants ("expert consultants"). These were selected in August 1998. The expert consultants have worked closely with the Panel, preparing for the Panel's consideration reports covering the verification and valuation issues raised by the claims.

9. Pursuant to article 32 of the Rules, the Panel was provided with claim summaries recording the significant legal and factual issues identified in the claims as well as other information, such as legal briefing notes and reports produced by observers shortly after the liberation of Kuwait, to assist the Panel in its review of the claims.

10. The review of each claim by the Panel identified in many cases a need for further information and evidence. Each of the claimants was given the opportunity to provide the Panel with such further information and evidence.

11. The Executive Secretary of the Commission submitted a report 3/ dated 8 July 1998 to the Governing Council in accordance with article 16 of the Rules, which set out the first instalment claims and discussed the main factual and legal issues relating to them. A number of governments, including the Government of Kuwait and the Government of the Republic of Iraq, submitted additional information and views on the issues raised in response to that report.

12. Given the nature of the claims, the Panel determined that due process would require the provision to Iraq of copies of all of the claim files submitted by claimants. These were forwarded to Iraq pursuant to Procedural Order 1 issued in respect of each claim on 14 September 1998.

13. Iraq submitted a response to each of the first instalment claims. Each response included a statement of its position regarding the Commission's procedures and operation and raised specific issues of law, verification, valuation or fact. The Panel has duly considered these responses and has investigated those issues of fact accompanied by sufficient information to make investigation possible. Details of the responses so investigated, and the Panel's findings in respect of them, are set out in the consideration of each of the claims below.

14. In its responses to the claims, Iraq also requested the Panel to hold oral hearings into each claim at which Iraq would be permitted to attend and make submissions. Iraq has made similar requests in relation to the Commission's review of other claims. The Panel has considered carefully whether such hearings are required for the processing of the claims and their proper review by the Panel. The Panel concludes, in common with other panels, that the submissions and documents made available to it and the additional information obtained by it have permitted a thorough and fair determination and evaluation of each of the claims. Consequently, the Panel finds that it is not necessary to hold oral hearings.

15. At the direction of the Panel, technical missions were sent to Kuwait and to Winchester, Virginia, in the United States of America, 4/ to investigate certain factual and valuation issues and to carry out on-site inspections. Six such missions took place between August 1998 and June 1999. In June 1999, one of the Panel members, Commissioner Jacovides, participated in one such mission to Kuwait. The missions to Kuwait also included meetings with PAAC

and the Government of Kuwait's advisers, interviews with certain claimant witnesses, inspection of documents and visits to sites of physical damage and reconstruction. The findings of each mission are set out in the relevant sections of this report. The Panel has also reviewed videotape evidence submitted by the Government of Kuwait.

## III. THE LEGAL FRAMEWORK

### A. Applicable law

16.The law generally to be applied by the Panel is found in article 31 of the Rules. This provides that the Panel shall apply:

> "Security Council resolution 687 (1991) and other relevant Security Council resolutions, the criteria established by the Governing Council for particular categories of claims, and any pertinent decisions of the Governing Council. In addition, where necessary, Commissioners shall apply other relevant rules of international law".

17.The principal substantive rule applied by the Panel is paragraph 16 of Security Council resolution 687 (1991). In this, the Security Council declared Iraq to be liable under international law "for any direct loss, damage, including environmental damage and the depletion of natural resources, or injury to foreign Governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait".

18.The Panel has taken note of certain findings contained in the reports of other panels of Commissioners, which have been approved by the Governing Council, regarding the interpretation of relevant Security Council and Governing Council resolutions and decisions, as well as the reports of the Executive Secretary issued pursuant to article 16 of the Rules and the responses to them.

### B. The directness requirement

19.The Panel construes the requirements of paragraph 16 of Security Council resolution 687 (1991) as meaning that all loss or damage directly caused by Iraq's invasion and occupation of Kuwait is in principle compensable and, correspondingly, that any loss or damage not so caused is not compensable.

20.The Panel has also taken into account the Governing Council's guidance on the interpretation of these requirements, notably as set out in decisions 7 5/ and 15. 6/

21. Paragraph 34 of decision 7 provides as follows:

> "These payments are available with respect to any direct loss, damage, or injury to Governments or international organizations as a result of Iraq's unlawful invasion and occupation of Kuwait. This will include any loss suffered as a result of:
>
> (a) Military operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991;
>
> (b) Departure of persons from or their inability to leave Iraq or Kuwait (or a decision not to return) during that period;
>
> (c) Actions by officials, employees or agents of the Government of Iraq or its controlled entities during that period in connection with the invasion or occupation;
>
> (d) The breakdown of civil order in Kuwait or Iraq during that period; or
>
> (e) Hostage-taking or other illegal detention".

22. Paragraph 6 of decision 15 confirms that there "will be other situations where evidence can be produced showing claims are for direct loss, damage or injury as a result of Iraq's unlawful invasion and occupation of Kuwait", in relation to which claimants will have to prove that a loss is "direct". Paragraph 3 of decision 15 emphasises that for any alleged loss or damage to be compensable, the "causal link must be direct".

23. The Panel finds that there is ample authority in international law, including the reports of other panels, 7/ to support the view that a "direct loss" in these circumstances is one which, as a matter of objective assessment, would have been expected as a normal and natural consequence of Iraq's invasion and occupation of Kuwait. This is the test of causation that the Panel has applied to these claims.

## C. Mitigation

24. In assessing the first instalment claims, the Panel has borne in mind the duty of the injured party to take all reasonable measures to avoid, diminish or mitigate the damage resulting from Iraq's invasion and occupation of Kuwait, 8/ and finds that the reasonable costs of so doing are themselves compensable.

# IV. CONSIDERATION OF COMMON LEGAL ISSUES

## A. Approach

25. Many of the legal issues raised in the first instalment claims arise more than once. The Panel therefore finds it appropriate to report first on issues common to several claims and then, in the light of these common considerations, to examine and report on each claim individually. The Panel now turns to such common legal issues.

## B. Property losses

26. As to property losses, the Panel notes that in the first instalment claims there are 10 claims totalling US$494,622,998 for loss of real property and there are 16 claims totalling US$93,667,608 for loss of tangible property.

27. Some claimants assert that their premises were occupied by Iraq. All claimants provide evidence of loss, damage or destruction by way of witness statements, damage assessment reports and/or photographs or videotapes. Understandably, much of this evidence dates not from the occupation period itself, but rather from the period after liberation, when Ministry or other Government of Kuwait personnel were able to re-enter the premises of the various Ministries or other Government entities, as the case may be.

28. The Panel has also taken into consideration the Farah report, 9/ which sets out in detail 10/ the level of damage and destruction found after liberation. The report noted that the damage, while generally minor from a structural point of view, included significant damage to walls and installations. It also noted widespread vandalism and looting of equipment and furnishings.

29. The Panel is accordingly satisfied that the evidence submitted in support of the claims for property losses is sufficient to demonstrate that the losses were direct, falling within the provisions of paragraph 34 of decision 7 11/ and those of paragraph 13 of decision 9. 12/

30.Accordingly, the Panel recommends compensation for such losses, subject to their verification and valuation carried out in the manner described in paragraphs 109 to 115 below. In relation to claims for vehicles, the Panel reviewed a motor vehicle valuation table submitted by the Government of Kuwait that lists the value of a wide range of motor vehicles in Kuwait as at 1 August 1990. After independent inquiries were made by the expert consultants as to the accuracy of this table, the Panel, in common with other panels, accepted it. 13/

## C. Relief paid to employees

31.At the outset it is necessary to make it clear that the discussion in this section, and the amounts examined in it, relate not only to the first instalment claims, which are the principal subject of this report, but also to the other "F3" claims. This explains the large size of the totals involved.

32.Thirty-six of the sixty-two "F3" claimants seek compensation for relief payments made to the Kuwaiti and Gulf Cooperation Council ("GCC") employees of the Government of Kuwait. The payments amounted to the salaries the employees would have earned, but did not receive, in respect of the occupation and emergency periods. Each such claimant seeks compensation in respect of its own employees. These employees, some of whom remained in Kuwait during the occupation and emergency periods and some of whom left after Iraq's invasion and occupation of Kuwait, did not receive their regular salaries during those periods. The Government made the relief payments in a series of lump-sum payments commencing after liberation, and claims the amounts so paid. The total amount of the compensation sought for these payments in all the "F3" claims is US$2.03 billion and the number of employees in respect of whom such claims are made is around 100,000.

33.The facts surrounding each of these claims are sufficiently similar for the Panel to consider them together. The amounts claimed constitute a not insignificant percentage of the total compensation sought by the Government of Kuwait. The Panel has therefore found it appropriate to set out its consideration of these claims in detail.

34.The Government supplemented each of these claims by submitting in May 1998 additional information that included the following background:

> "In 1991, Kuwait's Council of Ministers directed, in partial relief for the major losses suffered as a result of Iraq's invasion and occupation,

> that Government organizations should pay the salaries that their Kuwaiti and GCC employees would have earned during the seven-month occupation period ... and three-month recovery period".

35. Paragraph 36 of decision 7 provides in part as follows:

> "[P]ayments are ... available to reimburse payments made or relief provided by Governments or international organizations to others - for example to nationals, residents or employees or to others pursuant to contractual obligations - for losses covered by any of the criteria adopted by the Council".

36. The Panel finds, on the basis of the considerable evidence now made available to it, that the payments for which the claimants seek compensation were made to compensate for the loss of the employees' financial support during the occupation and emergency periods. Such payments constitute payments made or relief provided to others within the meaning of paragraph 36 of decision 7 and are thus in principle compensable.

37. In assessing the amount of compensation to be paid, the Panel has borne in mind the number of employees concerned and the impossibility of calculating the actual entitlement of each individual. It has therefore proceeded on the basis of calculating the compensation payable in respect of the employees by way of an average individual entitlement (the "entitlement"), using information provided by the claimants and the Government so as to ensure that the entitlement is as representative as possible.

38. The two main factors determining the entitlement are the length of the period for which payment of compensation is justified and the amount of salary which would have been received by each individual during that period, less appropriate deductions as explained in paragraphs 41 to 48 below.

39. With respect to the first factor, the Panel finds that compensation should be awarded based on the period that the employees were reasonably unable to work. Recalling that the positions of the employees were suspended, not terminated, the Panel concludes that it was usually not possible for the employees to resume their positions until the end of the emergency period. The employees were thus reasonably unable to work during both the (seven-month) occupation period and the (three-month) emergency period, a total of ten months.

40.With respect to the second factor, the first step undertaken by the Panel is to compare the monthly amounts ordinarily received by way of salary by the employees and the amounts actually paid retrospectively. 14/

41.The Panel notes that the Government of Kuwait operates a social security system which confers pensions and similar benefits on employees, and which is funded by contributions from employers and employees (the "Social Security Fund"). These contributions are calculated as a percentage of salary and the contributions of the employees, being five per cent of gross salary, are deducted at source from the salaries paid to them. As part of the first step described above, the Panel requested the Government to confirm whether the amounts paid to the employees and claimed as relief took into account the employees' contributions where necessary and whether there had been any loss of benefits to the employees. The Government responded that there had been no loss of benefits, and that some but not all claimants had accounted for the contributions by paying to the employees only their gross salary less the five per cent deduction. The Panel has taken the Government's response into consideration and reviewed it in light of the evidence provided in support of each claim. The Panel has found that suitable account has been taken in a number of claims. The Panel has therefore determined that an adjustment should be made to the amounts claimed in cases in which the Panel is not satisfied that the social security contributions have been adequately accounted for.

42.In order to ensure that the entitlement accounts for the employees' true losses, as a second step the Panel considers and brings into account the employees' entire financial receipts (including the benefits received from relief programmes) and expenditures over the compensable period. Furthermore, the Panel has applied the general principle that any incidental benefit or gain on the part of a victim should be offset against his or her losses. In other words, "saved" expenses, that is, expenses that the employees would ordinarily have incurred if Iraq's invasion and occupation of Kuwait had not taken place, but did not in fact incur during the period for which compensation is recommended, fall to be deducted from the entitlement.

43.In order to ascertain what other relief payments were made and what expenses the employees might have "saved" during the period, the Panel issued Procedural Order 15 in respect of all relevant first instalment claims, seeking information in this connection. A comprehensive response was received, which provided a model of the average Government employee covering the amount and nature of his or her income and expenditure and the benefits obtained by him or her through policies implemented by the Government of Kuwait during the period.

44.This response showed that the pre-invasion levels of consumption in Kuwait were very high, exceeding on average the average Government employee's monthly salary. 15/ It also described a wide-ranging programme of relief payments. 16/ The Panel has taken this information into account. 17/

45.The Government submitted that only a few employees who left Kuwait could demonstrate that their costs outside Kuwait exceeded the relief received and that these employees have made individual claims before the Commission. With regard to those who did not leave Kuwait, the Panel assumes that any losses in respect of additional costs incurred could similarly have been the subject of claims before the Commission. Accordingly, the Panel assumes that additional living expenses and the relief paid in respect of them need not be taken into account when calculating the employees' true losses.

46.In the light of the above considerations, the Panel finds that deductions for "compensation received elsewhere for the same loss" should be made in respect of the free food and utility services provided in Kuwait over the period above. 18/

47.The Panel further finds, from the model provided by the Government of Kuwait, that the employees who were outside Kuwait during the period did indeed "save" certain expenses in Kuwait. 19/ That is, they did not incur a proportion of ordinary and anticipated living expenses over the period.

48.On the basis of the matters noted in paragraphs 46 and 47 above, the Panel recommends a deduction of 60 per cent from the amounts claimed. That is, the Panel recommends a total award of 40 per cent of the relief paid to employees and claimed in each of the relevant "F3" claims, subject to verification of the amounts claimed and the Panel's assessment of the evidence presented. 20/ Accordingly, the Panel recommends an award to each respective claimant calculated in this manner.

### D. Loss of revenue

49.A number of the Government of Kuwait's claims seek compensation for the loss of revenue that would have been earned by the relevant claimant during the occupation, emergency and subsequent periods. The facts and circumstances of each claim vary according to the nature of the revenue-generating activity, but the basic question of the compensability of the Government's loss of revenue is relevant to all such claims, and the Panel has therefore considered the question as a common legal issue.

50.The Panel has considered whether losses of the Government of Kuwait's revenues are compensable in accordance with paragraphs 1 to 4 of Governing Council decision 9. 21/ These paragraphs state that the propositions and conclusions contained therein "shall apply to compensation for the loss of earnings or profits and other business losses covered by Security Council resolution 687 (1991)" and, after noting the liability of Iraq for direct losses, continue that "[u]ltimately it will be up to the commissioners to identify the applicable principles and apply them to the circumstances of particular cases".

51.The Panel is satisfied that Iraq's invasion and occupation of Kuwait led to the interruptions in Government services complained of, but that, by reason of the diversity of economic factors bearing upon each case, the determination of any revenue losses suffered has to be made separately for each claim.

52.The Panel will discuss in section VI below, in connection with the first instalment claims, whether individual revenue losses are compensable and, if so, the measure of compensation and the time period in respect of which compensation should be paid. The Panel finds that the time period is that during which the revenue was affected as a direct result of Iraq's invasion and occupation of Kuwait. The Panel has considered such time periods by reference to historical revenue trends and notes that the periods may in some cases extend to several years.

53.The Panel appreciates that acceptance of a loss of revenue as a compensable claim assumes that the revenue-generating activity would have continued at the same general level if Iraq's invasion and occupation of Kuwait had not occurred. It is, of course, true that all revenue collection depends upon some activity by a third party, e.g., a licensee seeking a licence for which he or she must pay. But the fact that the collection of such revenue is predicated upon the action of a third person cannot be seen as breaking the chain of causation between Iraq's invasion and occupation of Kuwait, on the one hand, and the particular loss of revenue, on the other. This is because the third party's action belongs to a class of conduct the continuation of which in periods of normality can reasonably be expected. Losses of revenue arising from the fact that fines or other penalties were not generated during the occupation and emergency periods are also to be treated in the same manner as other claims for loss of revenue and are to be valued accordingly.

54.In order to have a basis for assessing the extent and nature of revenue that could have been expected to be earned and that which was in fact earned, and to assist it in the consideration of the individual losses of revenue described below, the Panel issued Procedural Order 4 to obtain information as to revenue earned by relevant claimants in the period from 1 July 1985 to 30 June 1995. The information thus provided has been taken into consideration by the Panel in reaching the recommendations in section VI below.

55. In calculating revenue losses, the Panel has again applied the general principle that any incidental benefit or gain on the part of a victim should be offset against his or her losses.

56. This principle involves two considerations: first, that any expenditure which would have been incurred in the generation of the revenue lost, but which has not been so incurred, should be brought into account to reduce the claimed loss; 22/ second, where the Panel has identified extraordinary or increased revenues flowing from Iraq's invasion and occupation of Kuwait, such revenues should be accounted for in like manner. The Panel has therefore taken any such extraordinary income into account in connection with the loss of revenue claims.

57. The Panel has also taken account of amounts going to generate revenue in one Ministry or Government entity that would have been paid by another. This is because any such loss of revenue by one Government entity is an expense saved by the entity that would otherwise have paid it.

58. The Panel notes that the revenue of the Government of Kuwait may have been affected by changes in the population composition of Kuwait after liberation and has considered the impact of such changes where necessary.

## E. Contract interruption losses

59. The Government of Kuwait has presented a number of claims for compensation for losses sustained due to the interruption of contracts that were in existence on 2 August 1990 23/ and which had been concluded between a Government entity and third-party contractors, generally for the construction of a building or facility. The work was usually under way at the time of the invasion of Kuwait. In most cases, the relevant Government entity asserts that the contractor refused to complete the remaining contract work without extra payment to cover the costs of site restoration, increases in the cost of materials and other cost increases in the post-liberation period. The claimants usually negotiated a revised price with the contractors.

60. "Contract interruption losses" therefore encompass claims for increased costs under re-negotiated contracts, reflecting in certain cases additional work, such as site restoration. In considering these losses, the Panel, like the "F1" panel, 24/ has noted the obligation on each claimant, arising from

article 35(1) of the Rules, to demonstrate that a particular loss is eligible for compensation. In the context of contract interruption losses, therefore, the claimants must demonstrate that the price increases were a direct result of Iraq's invasion and occupation of Kuwait.

61.Recalling the obligation upon the claimants under article 35(3) of the Rules to submit sufficient evidence to prove their losses, the Panel sought information as to the conditions pertaining in the construction and building industry both before and after the occupation period, including information as to the number and nationality of construction workers in both periods. The Panel has considered such information in arriving at its recommendations on the first instalment claims set out below.

62.The Panel finds that, following the liberation of Kuwait, there was a general increase in the price of goods and services in Kuwait and that such increase was the result of many factors, the precise effect of which it is impossible to identify.

63.In relation to only three causes of increases in price has the Panel been able to determine that the causal link was "direct". These are price rises shown to be linked specifically to:

(a) site restoration costs (including those related to the replacement of materials and equipment taken during Iraq's invasion and occupation of Kuwait and which were needed for the resumption of construction contracts);

(b) additional transportation costs (including double-handling costs); and

(c) additional insurance costs. 25/

64.The Panel has determined that price increases caused by these factors are compensable. As regards other causes of price increases, the Panel was unable to conclude that they were a direct result of Iraq's invasion and occupation of Kuwait.

## F. Buildings not intended to be rebuilt

65. The Government has presented a number of claims for compensation for damage to buildings, usually schools or mosques, which will not be rebuilt principally because of their location near the border between Kuwait and Iraq or on Failaka Island. The claim is usually made for the estimated cost of reconstructing the building.

66. The Panel finds that the damage to such buildings is, in principle, compensable. In particular, the Panel finds that Iraq is liable for damage caused by it, even if the Government of Kuwait decides not to rebuild or repair the damage. However, the Panel has awarded as compensation the cost of reconstruction only in cases in which it is satisfied that the relevant building was incapable of repair. In other cases, only the cost of repair is awarded. In appropriate cases, the Panel has made adjustments for such items as depreciation, wear and tear, and reduced maintenance expenses arising from not having to maintain the building in the future. The compensation is measured by the cost at such time as it would be reasonable, in the ordinary course of events, to expect reconstruction or repair to have taken place.

## G. Damage to leased premises

67. The Government of Kuwait has presented a number of claims for the cost of repairing damage to premises which it occupied as tenant at the time of Iraq's invasion and occupation of Kuwait.

68. The Panel has noted that, in common with a number of legal systems, such repairs may legally have been the responsibility of the landlord pursuant to the lease and/or Kuwaiti law. To require the landlord to undertake the repairs and subsequently claim the cost from the Commission or (if the landlord was unwilling or unable to undertake the repairs) to require the Government of Kuwait to undertake the repairs and reclaim the cost from the landlord and not the Commission would, in the circumstances of Iraq's invasion and occupation of Kuwait and the widespread damage to the Government's facilities, be too technical and rigid an approach. The Panel finds that where premises leased to the Government were damaged as a result of Iraq's invasion and occupation of Kuwait, the cost of the repairs should be awarded to the person who paid for them, provided that the other party to the lease has not been awarded compensation for the same loss.

69. In order to ensure that the Commission recommends payment only once for repairs to each of the damaged buildings in question, the Panel instructed the

secretariat to examine the claims of the relevant landlords and advise the Panel of any duplication of claims in respect of the repairs. An award has been made by the Panel only where no duplicate claim has been awarded by the Commission.

## H. Contractual provisions allowing penalties for late completion or other breaches of contract

70.The Government of Kuwait has presented a number of claims for compensation for the full price of contracts for repair or reconstruction made after the end of the occupation period, although there were provisions within such contracts for a reduction in the contract sum for late completion or other breaches. Although it is at times apparent that a situation may have existed giving rise to the right to use such provisions, in most instances there is no evidence of advantage having been taken thereof.

71.The Panel has considered the effect of such provisions, and of whether or not they were invoked, on the extent of compensation payable. The Panel notes the obligation on each claimant to obtain a reasonable price for remedial works. Having regard to this obligation, and as part of the overall determination of the reasonable cost of the repair or reconstruction, the Panel finds that where the evidence shows that a reduction in the contract sum could have been insisted on, a reduction in the claim to that extent is warranted.

## I. Temporary repairs followed by more permanent repairs

72.The Government of Kuwait has presented a number of claims for the cost of urgent work undertaken to effect temporary repairs (for example, the claim in relation to the Kuwait Emergency Reconstruction Office). The cost of subsequent and more permanent repair has also been claimed in many cases, sometimes found in the same claim as the temporary repairs and sometimes in a different claim.

73.The Panel has considered whether and to what extent the assessment of loss should take into account the cost of such temporary repairs. Many of the Government's facilities and services suffered a considerable amount of damage as a result of Iraq's invasion and occupation of Kuwait. In many cases, and particularly in the immediate post-liberation period, it was essential rapidly to restore these facilities and services to at least a minimum operating capacity. In other cases, temporary repairs prevented greater damage being caused to the Government's facilities and services and thus helped to mitigate future damage. The Panel therefore considers that it was reasonable for the Government to address required emergency repairs as priorities and then to undertake permanent repairs at a later time. The Panel finds that the cost of temporary repairs which were reasonably necessary in the circumstances is compensable and has proceeded on this basis.

### J. Temporary premises

74.The Government of Kuwait has presented a number of claims for the cost of renting residential or business premises in Kuwait during periods in which the construction of new premises or the repair of existing premises was delayed as a result of Iraq's invasion and occupation of Kuwait. The claim for compensation is for the cost of renting alternative premises for varying periods following liberation.

75.The Panel determines that in principle such costs should be awarded for a reasonable period following liberation. In each specific case, consideration has been given to the nature of the damage and to the time normally likely to be necessary to effect site restoration, repairs or to complete construction. Associated with the latter question is that of the attribution of the cause for the relevant delay. In this regard, the Panel finds that the principles set out in paragraph 63 above are pertinent.

76.The Panel similarly finds that the costs of providing temporary housing to employees who, before the invasion, were provided with accommodation by a Ministry, is compensable to the same extent as the costs of temporary premises.

77.The Panel has sought to ascertain the reasons for the delay in the construction of new buildings and has scrutinised the evidence to identify both the original contractual date for completion of the new premises and the date for completion under the resumed contract. It has done so to ensure that delays arising other than from Iraq's invasion and occupation of Kuwait, including pre-invasion delays, are not considered in the ascertainment of the loss.

### K. Temporary headquarters outside Kuwait

78.The Government of Kuwait has presented a number of claims for the expenses of operating offices outside Kuwait during the occupation and emergency periods and for some short period thereafter.

79.The Panel recalls that as a result of Iraq's invasion and occupation of Kuwait, many of the Government's usual operations in Kuwait could not continue there. The Government was therefore obliged to conduct its operations elsewhere. Further, in some situations, the operation of offices outside Kuwait prevented greater damage being caused to the Government and to the people remaining in Kuwait. The Panel thus finds that the cost of operating offices outside Kuwait is compensable where the decision to establish such operations was reasonable in the circumstances. In each such claim, however, the Panel has been careful to ensure that only reasonable costs are allowed and it has deducted expenses that would ordinarily have been incurred in Kuwait if Iraq's invasion and occupation of Kuwait had not occurred.

### L. Cost of returning employees to Kuwait

80.The Government has also presented a number of claims for the cost of returning its employees to Kuwait after liberation to enable them to resume work. Most of these employees were non-Kuwaitis who left Kuwait following Iraq's invasion and occupation to return to their home countries.

81.The Panel finds that the reasonable costs of returning employees to Kuwait are compensable:

(a) under paragraph 34(b) of decision 7 where the cost of returning employees is a necessary consequence of evacuation; or

(b) where the return of the employees was a reasonable step in mitigation of loss (for example, where it is shown that the cost of returning an employee is less than the cost of hiring and training a new employee).

82.In each case the Panel has considered whether the costs were reasonable and were wholly incurred as a result of Iraq's invasion and occupation of Kuwait. In particular, the Panel has taken into consideration such factors as whether the employees would have been granted home leave during the period in question and whether the employees travelled in a class higher than appropriate. 26/

### M. Pre-paid rent

83.A number of the first instalment claims seek compensation for rent paid in advance on office or other premises ("pre-paid rent"). The claimants maintain that no benefit for the amounts paid was derived during the seven month occupation period and during the months following liberation because the Government was unable to use the premises. In each such case the Government claims the amount of the pre-paid rent for the period during which it is asserted that no benefit was obtained.

84. The Panel finds that compensation should be awarded where rent has been pre-paid on premises but only for the period that the Government of Kuwait was unable to use the premises as a direct result of Iraq's invasion and occupation of Kuwait. 27/ The measure of compensation should be the amount of pre-paid rent referable to that period, since such rent is an accurate indicator of the value of the benefit lost. The Panel has considered in each first instalment claim whether the claimant has demonstrated that its inability to use the premises for the period claimed was a direct result of Iraq's invasion and occupation of Kuwait, such as would have been the case if, for example, Iraq had occupied the premises in question.

85. The Panel is satisfied that there were no means by which the Government of Kuwait could have recovered the pre-paid rent and that, therefore, there has been no failure to mitigate on the part of the Government.

## N. Avoiding over-compensation

86. The Panel notes that the Government of Kuwait's activities in Kuwait were interrupted during the occupation and emergency periods and it would appear, therefore, that a proportion of usual Government expenditure may not have been incurred. The Panel has begun examining and will continue to examine throughout its review of the F3 claims whether and to what extent to bring into account any such unincurred expenses by way of set-off against the amount of compensation awarded to the Government.

87. In relation to the first instalment claims, the Panel has adopted and applied the following principles:

(a) loss of revenue claims should be awarded net of the identifiable expenses which would ordinarily have been incurred in the generation of that particular revenue (including, where appropriate, salaries); 28/

(b) where it can be established that expenses were saved as a result of damage to or destruction of assets, adjustments should be made to reflect this (see, for example, the claim for quality control testing equipment in the claim of the Ministry of Commerce and Industry at paragraph 317 below); and

(c) in claims for the cost of operating temporary offices outside Kuwait, considered at paragraphs 78 and 79 above, adjustments should be made to reflect any expenses saved by not operating offices in Kuwait.

88.The Panel does not consider it appropriate to deal with the more general question of unincurred expenses, which have not been brought into account as set out in the preceding paragraph, in a piecemeal fashion in the first instalment claims. It prefers, instead, to deal with the matter in a single consideration which can best take place in the context of the claim relating to the Kuwait Investment Authority 29/ to be reviewed in the third instalment. At that time the Panel will wish further to consider the following factors:

(a) that not all the Government's losses are compensable by the Commission, and not all Government losses have been claimed;

(b) that the Panel's recommendations in relation to certain claimed losses may include reductions for evidentiary reasons;

(c) that any reduction in Government expenses may have had a correlative effect on the benefits that the Government and its citizens would otherwise have enjoyed; and

(d) that revenue claims have been submitted by Kuwaiti entities in other claim categories and, in some cases, compensation may have been awarded by the Commission.

89.In this connection, the Panel requested from the Government of Kuwait, amongst other things, information as to the historic income and expenditure position of the Government and the Kuwaiti economy as a whole, a history of the financial reserves of the Government for the period 1986 to 1996, details as to claims made to the Commission for loss of revenue and an indication as to revenue losses for which no claim has been lodged with the Commission.

90.The Government of Kuwait submitted a detailed response which provided extracts from its national accounts and the bases upon which its financial information is recorded, a description of budgets and procedures, explanations as to the bases of presentation of financial accounts and statistics, and details of revenue claims before the Commission. The Panel notes that the Government keeps confidential certain information regarding its financial reserves and assets and that only limited secondary sources of such information are available.

91.The adjustments in the first instalment claims in relation to matters falling within sub-paragraphs 87(b) and 87(c) above will be borne in mind by the Panel when eventually considering the more comprehensive question of the overall position of the Government as set out in paragraph 86 above.

## O. Claims preparation and claims processing costs

92.The Government of Kuwait has presented a claim for claims preparation costs (being the fees of attorneys and other professional persons, and costs of support and secretarial staff, reproduction, and communication facilities). 30/ This claim aggregates such costs incurred in relation to the preparation of virtually all "F3" claims. It also includes the Government's own claims processing costs (being the cost of the administrative work involved in dealing with claims, including the establishment of necessary infrastructure such as PAAC). It is not clear which portion of the claim is for claims preparation costs and which portion is for claims processing costs.

93.The Panel has been notified by the Executive Secretary that the Governing Council intends to resolve the issue of the compensability of claims preparation costs in the future. Accordingly, the Panel makes no recommendation with respect to the claim for such costs.

94.As to claims processing costs, the Panel notes that decision 18 31/ provides for compensation for such costs by allowing for the deduction of a set fee from payments made to claimants. In light of this decision, the Panel considers itself bound not to recommend any additional compensation in respect of claims processing costs.

## P. Exchange rate

95.The claims for repair costs or replacement materials involve losses incurred in Kuwaiti dinars ("KD") or other currencies, but in all cases converted into and claimed in United States dollars. The Commission issues awards in United States dollars. The Panel must therefore consider whether the exchange rates used by the claimants are appropriate.

96.The Government of Kuwait states that, generally, when a single payment was made the exchange rate used was the rate on the date of payment; when many payments were made the rate was the average rate or rates for the relevant period over which the payments were made; and, for future payments, the rate was the average rate for the most recently available twelve-month period.

97.The Panel finds that such an approach is reasonable in the circumstances. In some cases other factors operate. These are described in the recommendations for the claims concerned.

## Q. Interest

98. The Government seeks interest on the principal claim amount in respect of each first instalment claim. Decision 16 provides in part that "interest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award". The Governing Council has stated that it will address the methods of calculation and payment of interest in the future. It is thus for the Panel to determine only the date from which interest is to run.

99. The Panel has considered how for the purposes of calculating interest the date of a specific loss is to be determined. It finds that, in the context of the enormous number of individual claim items, within several loss types, a specific determination for each claim item is impractical. The Panel has, therefore, concluded that for this purpose all losses should be deemed to have occurred on one single date.

100. The Government of Kuwait itself identified two possible dates at two different stages of the proceedings. The Government first selected, in its "Summary Report of Government Claims" submitted in July 1994, 26 February 1991 as the relevant date. This was on the basis that it was the last date on which Iraq could have taken or damaged assets, and that the Government was entitled to interest from that date, regardless of when expenditure was incurred on repairing or replacing the asset. A further reason was that since many of the losses occurred near the end of the occupation, the date of liberation was closer to the date of the actual losses than any other. In a subsequent submission, however, filed in May 1998, the Government amended its first submission to provide that interest should accrue from 2 August 1990, the date on which Iraq invaded Kuwait.

101. The matter has to a large extent already been examined in the "Report and Recommendations made by the Panel of Commissioners Appointed to Review the Well Blowout Control Claim (the "WBC Claim")" 32/ wherein the panel took the view that Kuwait did not suffer loss until it actually disbursed the costs of repair or reconstruction. The Panel shares this view and is therefore unable to accept Kuwait's second submission, that interest should commence on 2 August 1990.

102. Having regard to the varying dates of loss and the need to select one date for interest purposes, the Panel determines that, in all the circumstances, the date of loss for calculation of interest is 26 February 1991. 33/

## V. VERIFICATION AND VALUATION

### A. The importance of evidence

103. The Rules direct that each claim must be supported by sufficient evidence. Thus, article 35(1) of the Rules prescribes that:

> "Each claimant is responsible for submitting documents and other evidence which demonstrate satisfactorily that a particular claim or group of claims is eligible for compensation pursuant to Security Council resolution 687 (1991). Each panel will determine the admissibility, relevance, materiality and weight of any documents and other evidence submitted."

104. In relation specifically to governmental claims, article 35(3) provides that:

> "... such claims must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and amount of the claimed loss".

105. Pursuant to these provisions, each claimant has submitted a considerable body of documentary and other evidence in support of its claim. Some of this material was filed with the statement of claim itself; substantial further material has been provided in response to questions raised by the Panel; and still other material has been submitted to the Commission and reviewed (in some cases during on-site inspections) in Kuwait and elsewhere.

106. The evidence submitted by the claimants, including that additionally requested by the Panel, comprises, in most cases, a sample of the documents available. The size of the sample has been determined by reference to the nature of the loss and the character and quantity of the evidence available.

107. The Panel has addressed a number of specific requests to various Ministries and other Government entities for additional information and documents in their possession. These requests took the form of procedural orders, and other requests issued pursuant to procedural orders, of which to date some 100 have been issued. The responses to each such order or request, and their accompanying documents, have been duly considered by the Panel and its expert consultants.

108. The Panel has noted the claimants' general assertions that physical damage and destruction during Iraq's invasion and occupation of Kuwait

included the destruction of large numbers of documentary records, though the degree of destruction varied from claimant to claimant. As a result, certain elements of claims are supported only by witness statements or by reports without underlying primary documentation. The Panel, in the observance of due process and by the issue of procedural orders to claimants, has on occasion requested further evidence from the claimants in order to ascertain the degree of destruction of records with a view to assessing the evidence as a whole.

### B. The procedures adopted by the Panel to verify and value the first instalment claims

109. The principal tasks of the Panel are to assess the evidence with a view to determining whether the claimed loss or damage has in fact occurred and, in light of that determination, to assess the amount of compensation to be recommended in respect thereof.

110. In carrying out these tasks, one of the prime objectives of the Panel is to ensure consistency in the examination of the material and the resulting recommendations. This cannot be achieved other than by a systematic approach rigorously pursued in accordance with the requirements of the Rules. For this purpose the Panel has established three series of steps.

111. The first is a general verification and valuation programme applicable to all claims. This sets out procedures for the verification and valuation of the claims, including an initial assessment of the character and probative value of all the evidence originally submitted in support of each claim.

112. The second series of steps comprises specific verification and valuation programmes. These set out more detailed procedures for certain loss types, namely, contract, real property and tangible property losses. They include the identification of particular documents needed to establish the existence and terms of contracts and the title and character of real and tangible property as well as those needed to value the losses claimed.

113. The third series of steps comprises supplemental verification and valuation programmes. These set out further detailed procedures for each loss element and were designed at an early stage of the review of a claim to meet its particular character. The programmes identify any additional evidence and other information beyond that originally submitted by the claimant which the Panel considers necessary for a proper review of the claim. This step has not been carried out if the loss element under review falls below the level of materiality which is described below.

114. In applying these programmes the Panel has systematically scrutinised the evidence according to its type, date, 34/ quality and quantity and has made consistent adjustments to reflect the extent to which the evidence is not sufficient.

115. Any attempt by the Panel to set out in detail in relation to the individual claims before it the precise manner in which it has found that the evidence is sufficient or not sufficient would involve it in a complex exposition of a very large volume of material and would not be feasible within the confines of a panel report. Moreover, the weighing of evidence is not an exact science but necessarily involves some exercise of judgement or discretion by the Panel. The Panel has, therefore, normally not gone beyond a statement of its conclusions in each case.

## C. Evidential status of the reports of the claimants' accountants and engineers

116. Each claim contains an accountant's report and a number of them contain an engineer's report, in all cases commissioned by the Government of Kuwait.

117. The accountant's reports include descriptions of the claimed losses, summaries of the valuation methodologies adopted and schedules showing the derivation of the amounts claimed.

118. The engineer's reports contain evaluations of the repair and restoration works, commenting on the extent to which the works were required to repair invasion-related damage, the scope of works including enhancements, the degree of documentary support for the work said to have been done, the avoidance of duplication within the "F3" claims and, where contract interruption losses are claimed, a comparison of the work done under the pre-invasion and post-liberation contracts.

119. The Panel notes that all of the reports have been commissioned by the Government of Kuwait for the purpose of the submission of its claims to the Commission. They do not, therefore, constitute original or primary evidence, in contrast to, for example, written contracts, receipts and invoices. As such, the Panel has treated these accountant's and engineer's reports as supporting documents and not as primary evidence of the matters of fact asserted in them.

## D. Materiality

120. The sheer bulk of the claims before the Panel obliged it to focus on those parts of the claims 35/ which carry a greater risk of significant overstatement. The line between these parts and others is called the "level of materiality", with those parts of the claims above the level of materiality being called "material" and those below it "not material".

121. The Panel has set the level of materiality at US$500,000. However, the Panel has reduced the level of materiality in the following cases:

(a) where it is necessary to ensure the examination in sufficient detail of at least 80 per cent of the total value of any loss element across the "F3" claims, the level of materiality has been reduced accordingly, but not below US$100,000;

(b) for claims with a value below US$5,000,000 (excluding interest, claims preparation costs and any other part of the claim that the Panel finds not to be a direct loss) the level of materiality has been reduced to 10 per cent of the total value of the claim, but not below US$100,000; and

(c) in exceptional instances in which the Panel has found it appropriate to do so.

122. The Panel has determined that the use of these materiality levels will ensure a detailed review of over 99 per cent of the principal claim amount of the "F3" claims. The Panel considers this to be a necessary and therefore suitable approach to achieving its objective: that is, properly to review the "F3" claims within the time allotted for that task.

123. While the general and (where relevant) specific verification and valuation programmes have been carried out in the review of all loss elements, a supplemental verification and valuation programme has been designed and followed only for material loss elements. Further, so far as the non-material loss elements are concerned, the Panel has not requested any documentation other than that originally submitted by the claimant. In assessing the sufficiency of the evidence submitted in support of these loss elements, the Panel has regard to the fact that the claimant has not been requested to submit additional evidence and that to conclude that the evidence submitted is insufficient may unfairly penalise the claimant concerned. The Panel therefore assesses the sufficiency of the evidence in support of these loss elements in two stages; first, by applying the criteria described at paragraphs 114 and 115 above in the usual manner and, second, by adjusting its

conclusions to reflect the average sufficiency of all the evidence submitted in support of the claim concerned and/or the relevant loss element, as appropriate.

### E. Reporting on the verification and valuation of the first instalment claims

124. The expert consultants have provided the Panel with comprehensive reports on the results of the verification and valuation programmes for the first instalment claims, indicating their opinions as to the extent that each is supported by the evidence and the value to be given to each. The Panel has considered these reports in detail prior to coming to its conclusions and recommendations. These are set out in section VI below. The Panel is satisfied that each of the recommendations which it has made is reasonable in all the circumstances.

125. In explaining in any given case why a claim or part thereof has been reduced or rejected the Panel has sometimes used one or more of the following shorthand expressions, the weight of which will necessarily vary from case to case:

(a) "method of valuation" means that the amount claimed has been reduced because the valuation method used by the Government of Kuwait is not appropriate under the circumstances of the loss or the Panel has used an alternative method of valuation (such as the use of book value rather than the use of depreciated replacement cost);

(b) "overstatement" is used where an error of fact or of calculation is discovered;

(c) "inadequate procurement process" is used where the Government has failed to use an appropriate procurement process to ensure that the loss is kept to a minimum. In many cases, the appropriate procurement process would involve resort to competitive tendering, but such procedures may not be appropriate in the context of urgent or emergency repair work, for example;

(d) "enhancement" is used where the Government in replacing damaged or lost items has obtained an asset that is better than the one previously used, but has failed to give adequate credit for the improvement;

(e) "inadequate accounting for depreciation" is used where the Government has not properly considered the age or the remaining useful life of the asset as at the date of the loss or has used an inappropriate rate of depreciation;

(f) "inadequate accounting for residual value" is used where an amount is likely to be received from the disposal of an asset at the end of its useful life, and that amount is not adequately taken into account;

(g) "saved expenses" is used where the Government has not incurred expenses that it would ordinarily have incurred had Iraq's invasion and occupation of Kuwait not occurred, or has incurred reduced expenses as a result of the invasion and occupation; and the claim has not been correspondingly reduced. The matter is more fully discussed at paragraph 87 above; and

(h) "insufficient evidence" is used where the Panel considers that the claim must be reduced or rejected because it is not supported by sufficient evidence. 36/

## Notes

3/ S/AC.26/1998/R.22.

4/ The U.S. Army Corps of Engineers held documents in Winchester in relation to the claim of the Ministry of Finance - Kuwait Emergency Reconstruction Office (see paragraph 134).

5/ S/AC.26/1991/7/Rev.1.

6/ S/AC.26/1992/15.

7/ Notably, "Report and recommendations made by the Panel of Commissioners concerning the first instalment of individual claims for damages up to US$100,000 (category "C" claims)" (S/AC.26/1994/3), at part II, section D.

8/ Paragraph 9 of Governing Council decision 15 (S/AC.26/1992/15) states that: "The duty to mitigate applies to all claims".

9/ "Report of the Secretary-General on the scope and nature of the damage inflicted on the Kuwaiti infrastructure during the Iraqi occupation" (S/22535).

10/ At paragraphs 370 and following.

11/ Quoted in paragraph 21.

12/ Section II of Governing Council decision 9 (S/AC.26/1992/9) provides at paragraph 13 that "[i]n a case where business property had been lost because it had been left unguarded by company personnel departing due to the situation in Iraq and Kuwait, such loss may be considered as resulting directly from the invasion and occupation". The Panel finds this statement equally applicable to the Government of Kuwait's property left unguarded.

13/ See, for example, "Report and recommendations made by the Panel of Commissioners concerning part one of the first instalment of individual claims for damages above US$100,000 (category "D" claims)" (S/AC.26/1998/1), at paragraphs 267-269.

14/ As a result of Iraq's response to Procedural Order 1 in relation to the claim of the Ministry of Interior (UNCC Claim No. 5000137), the Panel made enquiries in relation to the extent to which the employees had received payment of their salaries in advance prior to the invasion. The Panel also notes that a few employees who received relief payments retrospectively also received payment for work done during the relevant period. The Panel has, in arriving at the percentage deduction to the claims for relief paid to employees set out in paragraph 48, taken into account the advance payments and the payments for work done.

15/ The Panel has considered the nature of economic activity in Kuwait and has concluded that this situation is explained by the fact that many Kuwaitis are owners or part-owners of businesses from which they derive income in addition to their salaried employment.

16/ The relief provided by the Government of Kuwait covered such items as living expenses while outside Kuwait, the provision of free utilities within Kuwait (by the forgiveness of payment therefor), the forgiveness of consumer debt, the forgiveness of certain rental payments, the distribution of free food, and the payment of a grant to each Kuwaiti individual who remained in Kuwait during the occupation period.

17/ The Panel notes that the response was compiled applying Government of Kuwaiti national accounts and statistics and on the basis of certain assumptions regarding income and expenditure patterns, and has made suitable allowance for the use of such techniques in quantifying its findings.

18/ Amounts provided for living expenses outside Kuwait during the period (under a programme set up by the Ministry of Finance and the subject of UNCC Claim No.5000112) were paid in respect of additional living expenses and do not comprise "compensation received elsewhere". Further, the Panel has not included in its consideration any relief provided for losses other than loss of income, such as relief in respect of loss of amenity, again to ensure that compensation is based upon the employees' true financial losses.

19/ See paragraph 42.

20/ A large percentage of the 60 per cent deduction arises in respect of "saved expenses".

21/ Governing Council decision 9 (S/AC.26/1992/9).

22/ See paragraph 87.

23/ Where the formation of a formal contract was not complete at the time of the invasion, the Panel finds that there ought to be compensation for contract interruption losses only when there is evidence of consensus at the time of the invasion as to the essential provisions of the contract (being the identification of the parties, the principal undertakings and the price to be paid).

24/ "Report and recommendations made by the Panel of Commissioners concerning part two of the first instalment of claims by governments and international organizations (category "F" claims)" (S/AC.26/1998/4), paragraphs 70-72.

25/ Increased transport costs arise because some of Kuwait's ports of entry remained closed until October 1991, during which time shipments were landed elsewhere and goods then transported to Kuwait over land. The types of insurance costs include all risks and public liability insurance.

26/ "Report and recommendations made by the Panel Of Commissioners concerning part one of the first instalment of claims by governments and international organizations (category "F" claims)" (S/AC.26/1997/6), at paragraph 106.

27/ The Panel views the decision of the "F1" panel in relation to pre-paid rent set out in, for example, "Report and recommendations made by the Panel of Commissioners concerning part one of the first instalment of claims by governments and international organizations (category "F" claims)" (S/AC.26/1997/6) at paragraph 74 as turning on the particular facts found by the "F1" panel.

28/ As stated at paragraph 36, the Panel finds that the relief paid to employees is compensable (on the basis of paragraph 36 of decision 7) as being payment or relief to others. This categorisation is based on a finding that the Government of Kuwait did not, in fact, pay the salaries of its Kuwaiti and GCC employees during the occupation and emergency periods. What it paid, in fact, was an amount of relief measured by reference to the salaries that those employees would otherwise have received. Those salaries therefore constitute a saved expense.

29/ Which, amongst other things, manages the Government's general reserve and future generations funds.

30/ The claim on behalf of the Public Authority for the Assessment of Compensation, UNCC Claim No. 5000193.

31/ (S/AC.26/Dec.18) (1994), at paragraph 1.

32/ (S/AC.26/1996/5/Annex.) ("WBC Report") at paragraphs 227-230.

33/ An exception to this is the claim of the National Committee for Missing and Prisoner of War's Affairs where the date of loss for calculation of interest is determined to be 31 October 1997 (see paragraph 344).

34/ The Panel has considered the three periods during which a document may have come into existence: prior to Iraq's invasion of Kuwait; during the occupation and emergency periods; and thereafter. The Panel accepts that the number and quality of documents which may be expected to exist will vary according to each such period.

35/ Within the loss types (that is, those appearing on the Form F) the claimants have further subdivided the losses into categories which the Panel will refer as "loss elements". For example, "loss of revenue" is a loss element within the "business transaction or course of dealing" loss type. The Panel has approached its review of the claims and their supporting evidence by reference to loss elements as opposed to the more general loss types.

36/ See paragraph 115.

# Annex XIV

## Decision concerning the second instalment of F3 claims taken by the Governing Council of the United Nations Compensation Commission at its 105th meeting, held on 15 March 2001 at Geneva*

*The Governing Council*,

*Having received*, in accordance with article 38 of the Provisional Rules for Claims Procedure ("the Rules"), the report and recommendations made by the panel of Commissioners concerning the second instalment of "F3" claims, covering 21 claims, 1/

1. *Approves* the recommendations made by the panel of Commissioners, and, accordingly,

2. *Decides*, pursuant to article 40 of the Rules, to approve the amounts of the recommended awards concerning the claims covered in the report. The aggregate amount awarded, based on the recommendations contained in paragraph 752 of the report, is as follows:

| Country | Number of claims recommended for payment | Number of claims not recommended for payment | Amount of compensation claimed (USD) | Amount of compensation recommended (USD) |
|---|---|---|---|---|
| Kuwait | 21 | - | 4,572,908,523 | 2,178,134,874 |

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* Previously issued as document S/AC.26/Dec.121 (2001).

1/ The text of the report appears in document S/AC.26/2001/7 (annex XIII above).

3. *Reaffirms* that when funds become available payments shall be made in accordance with decision 100 (S/AC.26/Dec.100 (2000)),

4. *Recalls* that when payments are made in accordance with decision 100, and pursuant to the terms of decision 18 (S/AC.26/Dec.18 (1994)), the Government of the State of Kuwait shall distribute amounts received to the designated claimants in respect of approved awards within six months of receiving payment, and shall, not later than three months after the expiration of this time limit, provide information on such distribution,

5. *Requests* the Executive Secretary to provide a copy of the report to the Secretary-General, to the Government of the Republic of Iraq and to the Government of the State of Kuwait.

# Annex XV

## Decision concerning claims filed by individuals seeking compensation for direct losses sustained by Kuwaiti companies taken by the Governing Council of the United Nations Compensation Commission at its 105th meeting, held on 15 March 2001 at Geneva*

The Governing Council,

Noting that, pursuant to decision 7 of the Governing Council (S/AC.26/1991/7/Rev.1), claims for direct loss, damage, or injury to corporations and other entities as a result of Iraq's invasion and occupation of Kuwait may be submitted by each Government on behalf of corporations and other entities incorporated or organized under its law;

Noting also that, pursuant to the Provisional Rules For Claims Procedure, adopted by decision 10 of the Governing Council (S/AC.26/1992/10), claims for such losses are submitted in category "E";

Noting further that, notwithstanding the foregoing, some individuals who owned and/or operated Kuwaiti companies filed claims in categories "C" and "D" for direct losses sustained by the company as a result of Iraq's invasion and occupation of Kuwait;

Noting that some of these claims concern losses for which claims were also filed by the Kuwaiti company in category "E" ("overlapping claims");

Noting also that some of these claims concern losses for which no duplicative claim has been filed by the Kuwaiti company in category "E" ("stand alone claims");

Bearing in mind that the category "C" and "D" claim forms do not envisage the filing by individuals for losses suffered by a corporate

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[*] Previously issued as document S/AC.26/Dec.123 (2001).

entity, and that individuals were not entitled to claim in their own right for such losses;

Considering that the Governing Council has reviewed information from the secretariat concerning the business practices existing in Kuwait prior to and following Iraq's invasion and occupation of Kuwait and the legal and factual issues presented by overlapping and stand alone claims;

Considering also that the secretariat is required to request information from claimants in categories "C", "D" and "E4" in order to identify the extent and nature of overlapping and stand alone claims;

Considering further that, although it is charged with determining the amount of compensation to which claimants are entitled for direct losses resulting from Iraq's invasion and occupation of Kuwait, it is not within the mandate of the Commission to determine the respective entitlements of category "C" and/or "D" and category "E4" claimants to all or part of an award of compensation where there are overlapping claims, or to determine comparable issues that may arise in respect of stand alone claims;

Considering, however, that the Governing Council believes that due regard should be given to the claims submitted by non-Kuwaiti individuals in relation to losses suffered by Kuwaiti corporate entities;

Considering also that several member states of the Governing Council suggested that bilateral committees be established, involving in each case Kuwait and a Government or other submitting entity filing any overlapping or stand alone claims, to make timely determination of the respective entitlements of category "C" and/or "D" and category "E4" claimants to all or part of an award of compensation where there are overlapping claims or to determine comparable issues that may arise in respect of stand alone claims;

Noting that guidelines were subsequently drafted to govern the work of the bilateral committees (the "guidelines");

Noting also that the Commission can implement the determinations on entitlements made by the bilateral committees pursuant to the guidelines, which determinations shall be made solely by the bilateral committees with no intervention by the Commission;

Noting further that the guidelines enter into force with respect to a submitting entity when it has formally adhered thereto;

Noting that Kuwait irrevocably has delegated to the Commission authority to distribute payments to non-Kuwaiti claimants in connection with overlapping and stand alone claims, as irrevocably determined by the bilateral committees and notified to the Commission (the "delegation of payment");

Noting also that, pursuant to the guidelines, each submitting entity assumes responsibility for fulfilling the payment and reporting requirements set out in Governing Council decisions 18(S/AC.26/Dec.18 (1994)) and 48(S/AC.26/Dec. 48(1998)) with respect to such payments;

1. Decides to adopt provisions of the guidelines, and thereby commits the Commission, as follows:

(a) Directs the Executive Secretary to group overlapping claims relative to the losses suffered by a category "E4" claimant in order to permit the category "E4" Panels of Commissioners to make recommendations on awards of compensation suffered by the Kuwaiti company;

(b) Directs the Executive Secretary to identify and process in category "E4" as Kuwaiti corporate claims those stand alone claims for which the individual claimant has been found by the category "D" Panels of Commissioners to have authority to file a claim on behalf of the company;

(c) Decides to authorize the Executive Secretary to transmit to relevant submitting entities and to Kuwait documents and information that relate to the Kuwaiti company concerned or that may concern losses for which another claimant has or might have asserted a claim;

(d) Decides to authorize the Executive Secretary to disclose to the bilateral committees information received from submitting entities on behalf of claimants in category "C", "D" and "E4";

(e) Decides that, within the limits of duly registered claims, the decisions of the bilateral committees pursuant to the guidelines will be carried into effect by the Executive Secretary on behalf of the Commission when payment is made;

(f) Decides, having reviewed the guidelines, to authorize the delegation of payment submitted by the Government of Kuwait;

(g) Directs, reflecting Kuwait's irrevocable delegation of authority in this connection, the Executive Secretary to make payments on Kuwait's behalf to Governments and other submitting entities on behalf of individual claimants of the portions of awards of compensation to which such individual claimants are entitled, as determined by the bilateral committee under the guidelines; and

2. Invites Governments and other submitting entities having overlapping and stand alone claims to adhere to the guidelines;

3. Notes that, in the absence of such adherence, no payment to individual claimants with respect to overlapping and stand alone claims can be made to such Governments and other submitting entities;

4. Annexes copies of the guidelines and the delegation of payment.

Annex I

# GUIDELINES FOR THE WORK OF BILATERAL COMMITTEES TO BE FORMED TO RESOLVE CERTAIN ISSUES INVOLVING THE STATE OF KUWAIT AND OTHER STATES RELATING TO OVERLAPPING CLAIMS AND STAND ALONE CLAIMS AT THE UNITED NATIONS COMPENSATION COMMISSION

ACKNOWLEDGING THAT:

The United Nations Compensation Commission ("UNCC") was established in 1991 pursuant to United Nations Security Council ("Security Council") resolution 692 (1991) to process claims and to pay compensation for any direct loss, damage or injury as a result of Iraq's unlawful invasion and occupation of the State of Kuwait ("Kuwait"), and to administer the fund created to pay such compensation;

The Public Authority for the Assessment of Compensation for Damages Resulting from the Iraqi Aggression ("PAAC") was established by Amiri Decree No. 6 of 1991 as the entity responsible on behalf of Kuwait for coordinating Kuwait's response to the UNCC claims process, for submitting claims on behalf of Kuwait and Kuwaiti individuals and corporations, and for disbursing compensation awarded by the UNCC to Kuwaiti claimants;

Upon reviewing the pilot group of category "D" claims for "D8/D9" business losses, it became apparent to the UNCC that certain of these claims include losses relating to companies incorporated in Kuwait. In some of these cases, the Kuwaiti company has also submitted a claim for the same business losses in category "E4" ("Overlapping Claims"). In other cases, there is no corresponding category "E4" claim submitted by the Kuwaiti company ("Stand Alone Claims");

Further investigation by the UNCC indicates that Overlapping Claims may also involve individual claims filed in category "C" that have already been processed and for which compensation awards have been approved by the Governing Council of the UNCC ("Governing Council") and paid;

Since the relevant business losses in both Overlapping Claims and Stand Alone Claims relate to companies incorporated in Kuwait, PAAC is the appropriate body to disburse any compensation awards in respect thereof;

With respect to Overlapping Claims, the panels of Commissioners are in a position to review all of the evidence relating to the claimed losses, damage and injury provided by the category "C" and/or "D" and category "E4" claimants, and it is preferable for a determination of such losses, damage and injury to be made in the context of the review of both claims pending before the UNCC;

With respect to Stand Alone Claims, the evidence may show that an individual had authority to act on behalf of a Kuwaiti company that did not file a claim in category "E4", including bringing claims on behalf of that company;

The Governing Council considers that the UNCC does not have jurisdiction to determine the respective rights of category "C" and/or "D" and category "E4" claimants vis-a-vis each other where there are Overlapping Claims, or to determine comparable issues that may arise in respect of Stand Alone Claims. Therefore, it is considered appropriate to establish bilateral committees involving in each case Kuwait and a state submitting any Overlapping or Stand Alone Claim that will make timely determinations of such rights and issues, and the UNCC has committed itself to provide facilities for the use of such bilateral committees at its headquarters;

The purpose of the bilateral committees is to assess and determine a fair and equitable allocation of the compensation, which may in due course be awarded by the Commission in relation to losses of Kuwaiti corporate entities, to claimants in Overlapping Claims or Stand Alone Claims, in such a manner that the allocation, expressed as a percentage share or shares of losses duly claimed, shall be communicated to the Commission and applied by it when disbursing the amounts awarded in due course;

With respect to both Overlapping Claims and Stand Alone Claims, Kuwait has irrevocably delegated to the UNCC the authority to distribute such portions of compensation awards as may be disbursed to category "D" claimants, and has irrevocably delegated to the relevant submitting entities as defined in article 5, paragraph 1 of the Provisional Rules for Claims Procedure ("Rules") (S/AC.26/1992/10), the responsibility for discharging the reporting requirements of Governing Council decision 18 (S/AC.26/1994/18);

The compensation awards will be paid from the United Nations Compensation Fund ("Fund") created under Security Council resolution 692 (1991). The Fund operates in accordance with the United Nations Financial Regulations and Rules, and enjoys, in accordance with Article 105 of the Charter of the United Nations and the Convention on the Privileges and Immunities of the United Nations of 13 February 1946, the status, facilities, privileges and immunities granted to the United Nations.

THEREFORE GUIDELINES ARE ADOPTED AS FOLLOWS:

## Article 1

Upon the Governing Council adopting provisions of these guidelines, Kuwait and any state or international organization that has submitted any Overlapping or Stand Alone Claim to the UNCC and has notified its adherence to the guidelines to the Executive Secretary of the UNCC ("Adhering State") shall be mutually obligated as set forth herein. The guidelines shall become effective in each case upon such notification to the Executive Secretary of the UNCC, who has undertaken promptly to notify Kuwait of each such adherence.

## Article 2

A separate bilateral committee shall be established between Kuwait and each Adhering State which shall, in the case of Overlapping or Stand Alone Claims, determine the respective entitlements of category "C" and/or "D" claimants to all or part of any compensation award made in the name of a Kuwaiti company. The term "entitlements" herein means the percentage share or interest of the respective claimant(s) in the claim(s) submitted, based on ownership shares and/or interests, and taking into account any outstanding obligations between the individual(s) and the Kuwaiti company.

## Article 3

Such bilateral committee shall consist of three members, each of whom shall be able to act impartially, none of whom may be a Commissioner of the UNCC and, preferably, none of whom shall be an employee of Kuwait or the Adhering State. Kuwait and each Adhering State shall each appoint one such member within thirty days following the latter's adherence to the guidelines. In accepting to serve on a bilateral committee, the members undertake to respect the confidentiality of the documents that may be called upon to review in order to make their determinations.

## Article 4

Within thirty days of adherence to these guidelines by the first state to become an Adhering State, the Executive Secretary shall appoint an appointing authority that shall appoint a single individual to serve as the third member and chairman of each bilateral committee to be established pursuant to these guidelines ("Umpire"). The Umpire may not have the nationality of either Kuwait or any state that is known to have submitted any Overlapping or Stand Alone Claim to the UNCC.

## Article 5

The procedures set forth in articles 3 and 4 above shall apply in respect of the filling of any vacancy on any bilateral committee occurring by virtue of death, resignation, incapacity or removal.

## Article 6

If any member of any bilateral committee is not appointed as provided above in articles 3 and 5, then the other member and the Umpire shall nonetheless proceed to make determinations, with the Umpire having the casting vote. If two such members of any bilateral committee have not been so appointed, then the Umpire shall nonetheless proceed to make determinations alone.

## Article 7

Kuwait or the Adhering State may request the removal of any member of any bilateral committee if circumstances exist that give rise to justifiable doubts that such member is able to meet the requirements of articles 3 and 4. Any such request must be made within fifteen days after the appointment of such member or after the facts on which it is based became known to the requestor and shall be decided by the appointing authority designated pursuant to article 4.

## Article 8

Any fees and expenses of the two members of any bilateral committee other than the Umpire shall be paid directly to each by Kuwait and the Adhering State, respectively. Any fees and expenses of the Umpire, as well as any expenses of any bilateral committee as such, shall be payable in advance by Kuwait and each Adhering States in amounts proportional to the number of days required to resolve their respective claims referred to the Umpire for decision, as set out in article 13 below.

## Article 9

Each bilateral committee shall meet in Geneva, Switzerland, at the headquarters of the UNCC, and shall itself decide on its procedures.

## Article 10

No bilateral committee shall have any independent power or obligation to collect or to receive any evidence, information or representations from any source whatsoever other than information provided by Kuwait and the submitting entities to the UNCC under the Rules, including article 34. Accordingly, each bilateral committee shall make its determinations solely on the basis of the information provided by Kuwait and the submitting entities to the UNCC.

## Article 11

Each bilateral committee shall make its determinations with due regard for applicable principles of law and commercial practices.

## Article 12

It is anticipated that the two members of each bilateral committee other than the Umpire should be able in many cases to agree on a determination. Therefore, the Umpire shall participate in determinations of a bilateral committee only if, and then only to the extent that, the other two members are not in agreement. Where, however, the two members of any bilateral committee other than the Umpire are not in agreement as regards any determination to be made, such determination shall be made by a majority of all three members, with the exception of the circumstances set out in article 15.

## Article 13

The cost of the Umpire shall be assessed at a reasonable daily rate not to exceed the daily rate paid to UNCC commissioners for their work in reviewing claims. Kuwait and the Adhering State also agree to assume the reasonable expenses incurred by the Umpire in relation to the work described in article 12 above.

## Article 14

All determinations of any bilateral committee shall be final and binding and shall not be subject to any appeal, review, correction, modification or revision whatsoever, whether at the request of Kuwait or the Adhering State or at the request of a claimant, and regardless of the forum.

## Article 15

The bilateral committees shall be bound by the requirements of the work schedule of the UNCC and shall, in particular, schedule their meetings in coordination with the approval of reports and recommendations by the Governing Council. If a bilateral committee has not made a determination on entitlement by thirty days prior to the scheduled date for signature of the panel report and recommendations considering the relevant claim(s), the Umpire alone shall make such determination.

## Article 16

In the event that, with respect to any Overlapping Claim submitted by an Adhering State, there also exists any Overlapping Claim submitted by any other Adhering State (collectively "Related Overlapping Claims"), all determinations that otherwise would fall to be made by any bilateral committee shall be made by the Umpire alone, after meeting together with all other members of any bilateral committee established pursuant to the terms of these guidelines that is acting in respect of any Related Overlapping Claim. The provisions of articles 2 through 15 above shall apply in such event *mutatis mutandis*.

## Article 17

Kuwait and each Adhering State undertake to obtain from each of their respective claimants authorization to allow the secretariat to transmit to the other submitting entity concerned documents and other information in their claim files that may relate to losses for which another claimant has or might have asserted a claim. With respect to stand alone claims, Kuwait undertakes to use its best efforts to produce for the Kuwaiti company that has not filed a claim those documents that it is requested to submit for all other Kuwaiti corporate claims. These documents would include, for example, articles of association and audited financial statements filed with Kuwaiti regulatory authorities. In addition, Kuwait and each Adhering State undertake to obtain authorizations to submit the complete claim files of their respective claimants through the UNCC to the bilateral committees.

## Article 18

By adhering to these guidelines, the Adhering State accepts responsibility for fulfilling the payment and reporting requirements set out in Governing Council decisions 18 (S/AC.26/Dec.18 (1994)) and 48 (S/AC.26/Dec.48 (1998)) with respect to any portion of the compensation award to which the category "C" and/or "D" claimant has been determined to be entitled.

## Article 19

These guidelines shall remain in effect as to Kuwait and any Adhering State until they are notified by the Executive Secretary of the UNCC that there are no determinations left to be made by the bilateral committee and that there are no payments left to be made by the Commission with respect to Overlapping and Stand Alone Claims.

## Article 20

Any dispute arising over the interpretation of these guidelines shall be settled finally by the Umpire upon the request of either Kuwait or an Adhering State.

Article 21

The UNCC shall not be held accountable for any action taken or determination made by the bilateral committees pursuant to these guidelines.

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Annex II

# IRREVOCABLE DELEGATION OF AUTHORITY TO DISTRIBUTE PAYMENTS

The Government of the State of Kuwait, represented herein by the Public Authority for Assessment of Compensation for Damages Resulting from the Iraqi Aggression ("Kuwait"), hereby irrevocably delegates to the United Nations Compensation Commission the responsibility for disbursing to non-Kuwaiti claimants, their portion, if any, of amounts of compensation that shall be recommended by "E4" panels of Commissioners and awarded by the Governing Council in the name of Kuwaiti companies; such portions resulting from determinations made by Bilateral Committees in accordance with the Guidelines for the Work of Bilateral Committees ("guidelines"), provisions of which have been adopted by the Governing Council in its decision.

Kuwait undertakes not to deduct from such compensation awards the processing fees contemplated in Governing Council decision 18.

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# Annex XVI

## Thirteenth report of the Executive Secretary pursuant to article 41 of the Provisional Rules for Claims Procedure*

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* Previously issued as document S/AC.26/2001/8.

## Introduction

1. The present report identifies, pursuant to article 41 of the Provisional Rules for Claims Procedure (S/AC.26/1992/10) (the "Rules"), proposed corrections to approved claim awards in category "A" and "C".

## I. CORRECTIONS TO CATEGORY "A" CLAIM AWARDS

2. Recommendations for corrections to category "A" claims include duplicate claims, corrections of individual claims to family claims, reinstatement of claims previously identified as duplicates and decision 21 corrections.

### A. Category "A" duplicate claims

3. Since the twelfth article 41 report (S/AC.26/2000/27), a total of nine claims have been found to be duplicates of other claims also awarded compensation in category "A".

4. No compensation should have been awarded for these duplicate claims and the total recommended awards should be revised accordingly. Table 1, infra, identifies the Governments concerned, the instalments to be adjusted, the total number of claims to be corrected and the total amount by which the instalment will be reduced.

Table 1. Category "A" duplicate claims

| Country | Instalment | Total number of duplicate claims | Amount of reduction (USD) |
|---|---|---|---|
| India | Fourth | 1 | 4,000.00 |
| | Fifth | 2 | 8,000.00 |
| | Sixth | 1 | 4,000.00 |
| Sri Lanka | First | 1 | 4,000.00 |
| | Sixth | 4 | 16,000.00 |
| Total | | 9 | 36,000.00 |

### B. Corrections of individual claims to family claims

5. One claim submitted by the Russian Federation, originally identified as an individual claim, has been found to be a claim submitted on behalf of a family. Accordingly, as identified in table 2, infra, it is recommended

that the award for the claim, which is part of the fourth instalment, be increased from USD 4,000.00 to USD 8,000.00.

Table 2. Corrections of individual claims to family claims

| Country | Instalment | Number of claims affected | Amount of net effect (USD) |
|---|---|---|---|
| Russian Federation | Fourth | 1 | 4,000.00 |
| Total | | 1 | 4,000.00 |

## C. Reinstatement of claims previously identified as duplicates

6. Five claims from Bosnia and Herzegovina originally found to be duplicates should be reinstated since additional information received from the Government of Bosnia and Herzegovina shows that they were submitted by different individuals.

7. Accordingly, as identified in table 3, *infra*, it is recommended that the awards for those claims be adjusted to reflect the correct nature of the claims.

Table 3. Reinstatement of claims previously identified as duplicates

| Country | Instalment | Total number of claims reinstated | Amount of increase (USD) |
|---|---|---|---|
| Bosnia and Herzegovina | Sixth | 1 | 4,000.00 |
| | Special | 4 | 16,000.00 |
| Total | | 5 | 20,000.00 |

## D. Higher to lower amount corrections

8. Decision 21 (S/AC.26/Dec.21 (1994)) of the Governing Council states that "any claimant who has selected a higher amount under category 'A' (US$4,000 or US$8,000) and has also filed a category 'B', 'C' or 'D' claim will be deemed to have selected the corresponding lower amount under category 'A'" (US$2,500 or US$5,000). Twenty-five claims have been identified by the Government of Pakistan as having been filed for higher amounts in category "A" by claimants who also have claims in category "C". Accordingly, as identified in table 4, *infra*, it is recommended that the award amounts for the twenty-five claims be adjusted downward in accordance with decision 21.

Table 4. Higher to lower amount corrections

| Country | Instalment | Total number of matched claims | Amount of reduction (USD) |
|---|---|---|---|
| Pakistan | First | 9 | 16,500.00 |
| | Second | 16 | 27,000.00 |
| Total | | 25 | 43,500.00 |

9. The adjusted claim awards for the first, second, fourth, fifth, sixth and special (Bosnia and Herzegovina) instalments, and the total revised recommended awards for category "A" claims, are located in tables 1 to 7 in annex I to this report.

## II. CORRECTIONS TO CATEGORY "C" CLAIM AWARDS

10. Recommendations for corrections to category "C" claims include corrections to inter-category and intra-category duplicate claims and change of submitting entity.

### A. Corrections to inter-category and intra-category duplicate claims

11. Corrections to category "C" claim awards that are contained in this report arise from the notification of duplicate claims to the secretariat by Governments. The duplicate claims were not identified by the secretariat's electronic matching programmes during the processing of category "C" claims because of data discrepancies in claimant names and identifier information.

12. The four claims for which previously unreported inter-category duplication was found involve awards for departure-related ("C1-Money") losses that duplicate category "A" departure claim awards to the same claimants. The C1-Money award in each claim was less than the individual category "A" award of USD 2,500. Decision 24 (S/AC.26/Dec.24 (1994)) specifies that C1-Money losses may only be compensated to the extent that C1-Money awards exceed the relevant category "A" awards. Therefore, the category "C" award total in each of the four claims has been reduced by the amount of the C1-Money award.

13. Following notification by Governments, 18 category "C" claims were reviewed and confirmed to be intra-category duplicates. Among this group of claims, those claims that should be rejected as duplicates and those that are valid have been determined in accordance with the Panel's

guidance as set out at paragraph 58 of the seventh instalment report (S/AC.26/1999/11).

14. Further, and in accordance with the referenced paragraph 58, when differences exist in total amounts awarded between duplicate category "C" claims, the presumption should be that losses in the valid claim will be reconciled to the higher award. The total loss awards in four claims have accordingly been reconciled to the higher awards in the corresponding rejected claims.

15. It is therefore recommended that corrections be implemented to 26 claims for a net decrease of USD 102,863.22 in awarded amounts, as reflected in table 5, infra.

Table 5. Corrections to category "C" awards as a result of reported duplicate claims

| Country or international organization | Instalment | Number of claims affected | Amount of net effect (USD) |
|---|---|---|---|
| India | Seventh | 5 | (46,227.21) |
| Pakistan | First | 1 | 23,075.00 |
|  | Seventh | 6 | (56,522.71) |
| Philippines | Second | 2 | 562.14 |
|  | Fifth | 12 | (23,750.44) |
| Total |  | 26 | (102,863.22) |

## B. Change of submitting entity

16. At the request of the claimant and with the agreement of both the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) in Gaza and the Government of Egypt, one claim submitted by Egypt and approved in the third instalment has been transferred to UNRWA Gaza.

Table 6. Change of submitting entity for reporting and payment of claim

| Country or international organization | Number of claims reported | Instalment | Previous total recommended award (USD) | Corrected number of claims | Corrected total recommended award (USD) |
|---|---|---|---|---|---|
| Egypt | 16,067 | Third | 116,485,154.77 | 16,066 | 116,476,556.15 |
| UNRWA Gaza | N/A | Third | N/A | 1 | 8,598.62 |

17. The adjusted claim awards for the first, second, third, fifth and seventh instalments and the total revised recommended awards for category "C" claims, are identified in tables 1 to 6 of annex II.

## Annex I

## CORRECTED CATEGORY "A" CLAIM AWARDS

1. Based on the corrections reported in paragraphs 2 to 8 of this report, supra, the category "A" claims aggregate corrected amounts per country, by claim instalment, are as follows:

Table 1. First instalment category "A" claims corrections

| Country or international organization | Previous total recommended award (USD) | Corrected total recommended award (USD) |
|---|---|---|
| Pakistan | 12,099,500 | 12,083,000 |
| Sri Lanka | 25,093,000 | 25,089,000 |

Table 2. Second instalment category "A" claims corrections

| Country or international organization | Previous total recommended award (USD) | Corrected total recommended award (USD) |
|---|---|---|
| Pakistan | 19,526,500 | 19,499,500 |

Table 3. Fourth instalment category "A" claims corrections

| Country or international organization | Previous total recommended award (USD) | Corrected total recommended award (USD) |
|---|---|---|
| India | 146,257,000 | 146,253,000 |
| Russian Federation | 9,000,000 | 9,004,000 |

Table 4. Fifth instalment category "A" claims corrections

| Country or international organization | Previous total recommended award (USD) | Corrected total recommended award (USD) |
|---|---|---|
| India | 147,554,000 | 147,546,000 |

Table 5. Sixth instalment category "A" claims corrections

| Country or international organization | Previous total recommended award (USD) | Corrected total recommended award (USD) |
|---|---:|---:|
| Bosnia and Herzegovina | 1,828,000 | 1,832,000 |
| India | 17,313,000 | 17,309,000 |
| Sri Lanka | 35,571,000 | 35,555,000 |

Table 6. Special instalment category "A" claims corrections

| Country or international organization | Previous total recommended award (USD) | Corrected total recommended award (USD) |
|---|---:|---:|
| Bosnia and Herzegovina | 764,000 | 780,000 |

2. Based on the above corrections, the revised category "A" claim total recommended awards by instalment are as follows:

Table 7. Revised total recommended awards for category "A" claims

| Instalment | Previous total recommended award (USD) a/ | Corrected total recommended award (USD) |
|---|---:|---:|
| First | 189,599,500.00 | 189,579,000.00 |
| Second | 641,240,500.00 | 641,213,500.00 |
| Third | 531,496,500.00 | no change |
| Fourth | 732,605,000.00 | no change |
| Fifth | 782,636,000.00 | 782,628,000.00 |
| Sixth | 315,392,000.00 | 315,376,000.00 |
| Special (Pakistan) | 2,554,500.00 | no change |
| Special (Bosnia and Herzegovina) | 764,000.00 | 780,000.00 |

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a/ The previous total recommended award amounts in this column include the initial awards approved by the Governing Council in its decisions 22, 28, 29, 31, 33, 38, 67 and 101 (S/AC.26/Dec.22 (1994), S/AC.26/Dec.28 (1995), S/AC.26/Dec.29 (1995), S/AC.26/Dec.31 (1995), S/AC.26/Dec.33 (1995), S/AC.26/Dec.38 (1996), S/AC.26/Dec.67 (1999) and S/AC.26/Dec.101 (2000)) and subsequent corrections approved by the Governing Council in its decisions 42, 44, 51, 54, 57, 71, 79, 85, 95, 99, 109 and 113 (S/AC.26/Dec.42 (1997), S/AC.26/Dec.44 (1997), S/AC.26/Dec.51 (1998), S/AC.26/Dec.54 (1998), S/AC.26/Dec.57 (1998), S/AC.26/Dec.71 (1999), S/AC.26/Dec.79 (1999), S/AC.26/Dec.85 (1999), S/AC.26/Dec.95 (2000), S/AC.26/Dec.99 (2000), S/AC.26/Dec.109 (2000) and S/AC.26/Dec.113 (2000)).

## Annex II

## CORRECTED CATEGORY "C" CLAIM AWARDS

1. Based on the corrections reported in paragraphs 10 to 16 of this report, supra, the category "C" claims aggregate corrected amounts per country, by claim instalment, are as follows:

Table 1. First instalment category "C" claims corrections

| Country or international organization | Previous total recommended amount (USD) | Corrected total recommended amount (USD) |
|---|---|---|
| **Pakistan** | 17,768,858.00 | 17,791,933.00 |

Table 2. Second instalment category "C" claims corrections

| Country or international organization | Previous total recommended amount (USD) | Corrected total recommended amount (USD) |
|---|---|---|
| Philippines | 1,329,974.64 | 1,330,536.78 |

Table 3. Third instalment category "C" claims corrections

| Country or international organization | Previous total recommended amount (USD) | Corrected total recommended amount (USD) |
|---|---|---|
| Egypt | 116,485,154.77 | 116,476,556.15 |
| **UNRWA Gaza** | N/A | 8,598.62 |

Table 4. Fifth instalment category "C" claims corrections

| Country or international organization | Previous total recommended amount (USD) | Corrected total recommended amount (USD) |
|---|---|---|
| **Philippines** | 7,890,192.76 | 7,866,442.32 |

### Table 5. Seventh instalment category "C" claims corrections

| Country or international organization | Previous total recommended amount (USD) | Corrected total recommended amount (USD) |
|---|---:|---:|
| India | 187,010,525.09 | 186,964,297.88 |
| Pakistan | 74,572,959.48 | 74,516,436.77 |

2. Based on the above corrections, the revised category "C" claim total recommended awards by instalment are as follows:

### Table 6. Revised total recommended awards for category "C" claims

| Instalment | Previous total recommended award (USD) a/ | Corrected total recommended award (USD) |
|---|---:|---:|
| First | 51,086,478.00 | 51,109,553.00 |
| Second | 431,743,689.19 | 431,744,251.33 |
| Third | 324,883,154.77 | no change |
| Fourth | 654,598,151.73 | no change |
| Fifth | 735,475,730.98 | 735,451,980.54 |
| Sixth | 765,713,687.98 | no change |
| Seventh | 1,932,771,429.79 | 1,932,668,679.87 |

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a/ The previous total recommended award amounts in this column include the initial awards approved by the Governing Council in its decisions 25, 36, 37, 39, 41, 52 and 70 (S/AC.26/Dec.25 (1994),(S/AC.26/Dec.36 (1996), S/AC.26/Dec.37 (1996), S/AC.26/Dec.39 (1996), S/AC.26/Dec.41 (1997), S/AC.26/Dec.52 (1998), S/AC.26/Dec.70 (1999)) and subsequent corrections approved by the Governing Council in its decisions 39, 41, 52, 85, 95, 99 and 113 (S/AC.26/Dec.39 (1996), S/AC.26/Dec.41 (1997), S/AC.26/Dec.52 (1998), S/AC.26/Dec.85 (1999), S/AC.26/Dec.95 (2000), S/AC.26/Dec.99 (2000), and S/AC.26/Dec.113 (2000)).

# Annex XVII

## Decision concerning the correction of awards for category A and C claims pursuant to article 41 of the Provisional Rules for Claims Procedure taken by the Governing Council of the United Nations Compensation Commission at its 105th meeting, held on 15 March 2001 at Geneva*

The Governing Council,

Having received, in accordance with article 41 of the Provisional Rules for Claims Procedure (S/AC.26/1992/10) ("the Rules"), a report by the Executive Secretary concerning the correction of awards for claims in categories "A" and "C", 1/

1. Decides, pursuant to article 41 of the Rules, to correct the amounts of the approved awards for Governments and international organizations. 2/ The aggregate corrected amounts per country and instalment, are as follows:

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* Previously issued as document S/AC.26/Dec.122 (2001).

1/ The text of the report appears in document S/AC.26/2001/8 (annex XVI above).

2/ In conformity with the provisions on confidentiality in the Rules (articles 30, paragraph 1, and 40, paragraph 5), information concerning the amount to be paid to each individual claimant will not be made public, but will be provided to each respective Government and international organization separately.

Table 1. First instalment category "A" claims corrections

| Country or international organization | Previous total recommended award (USD) | Corrected total recommended award (USD) |
|---|---:|---:|
| Pakistan | 12,099,500 | 12,083,000 |
| Sri Lanka | 25,093,000 | 25,089,000 |

Table 2. Second instalment category "A" claims corrections

| Country or international organization | Previous total recommended award (USD) | Corrected total recommended award (USD) |
|---|---:|---:|
| Pakistan | 19,526,500 | 19,499,500 |

Table 3. Fourth instalment category "A" claims corrections

| Country or international organization | Previous total recommended award (USD) | Corrected total recommended award (USD) |
|---|---:|---:|
| India | 146,257,000.00 | 146,253,000 |
| Russian Federation | 9,000,000.00 | 9,004,000 |

Table 4. Fifth instalment category "A" claims corrections

| Country or international organization | Previous total recommended award (USD) | Corrected total recommended award (USD) |
|---|---:|---:|
| India | 147,554,000.00 | 147,546,000 |

Table 5. Sixth instalment category "A" claims corrections

| Country or international organization | Previous total recommended award (USD) | Corrected total recommended award (USD) |
|---|---:|---:|
| Bosnia and Herzegovina | 1,828,000 | 1,832,000 |
| India | 17,313,000 | 17,309,000 |
| Sri Lanka | 35,571,000 | 35,555,000 |

Table 6. Special instalment category "A" claims corrections

| Country or international organization | Previous total recommended award (USD) | Corrected total recommended award (USD) |
|---|---|---|
| Bosnia and Herzegovina | 764,000 | 780,000 |

Table 7. First instalment category "C" claims corrections

| Country or international organization | Previous total recommended amount (USD) | Corrected total recommended amount (USD) |
|---|---|---|
| Pakistan | 17,768,858.00 | 17,791,933.00 |

Table 8. Second instalment category "C" claims corrections

| Country or international organization | Previous total recommended amount (USD) | Corrected total recommended amount (USD) |
|---|---|---|
| Philippines | 1,329,974.64 | 1,330,536.78 |

Table 9. Third instalment category "C" claims corrections

| Country or international organization | Previous total recommended amount (USD) | Corrected total recommended amount (USD) |
|---|---|---|
| Egypt | 116,485,154.77 | 116,476,556.15 |
| UNRWA Gaza | N/A | 8,598.62 |

Table 10. Fifth instalment category "C" claims corrections

| Country or international organization | Previous total recommended amount (USD) | Corrected total recommended amount (USD) |
|---|---|---|
| Philippines | 7,890,192.76 | 7,866,442.32 |

Table 11. Seventh instalment category "C" claims corrections

| Country or international organization | Previous total recommended amount (USD) | Corrected total recommended amount (USD) |
|---|---|---|
| India | 187,010,525.09 | 186,964,297.88 |
| Pakistan | 74,572,959.48 | 74,516,436.77 |

2. Decides also that, based on the above corrections, the revised recommended awards by instalment are as follows:

Table 12. Revised total recommended awards for category "A" claims

| Instalment | Previous total recommended award (USD) a/ | Corrected total recommended award (USD) |
|---|---|---|
| First | 189,599,500.00 | 189,579,000.00 |
| Second | 641,240,500.00 | 641,213,500.00 |
| Third | 531,496,500.00 | no change |
| Fourth | 732,605,000.00 | no change |
| Fifth | 782,636,000.00 | 782,628,000.00 |
| Sixth | 315,392,000.00 | 315,376,000.00 |
| Special (Pakistan) | 2,554,500.00 | no change |
| Special (Bosnia and Herzegovina) | 764,000.00 | 780,000.00 |

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a/ The previous total recommended award amounts in this column include the initial awards approved by the Governing Council in its decisions 22, 28, 29, 31, 33, 38, 67 and 101 (S/AC.26/Dec.22 (1994), S/AC.26/Dec.28 (1995), S/AC.26/Dec.29 (1995), S/AC.26/Dec.31 (1995), S/AC.26/Dec.33 (1995), S/AC.26/Dec.38 (1996), S/AC.26/Dec.67 (1999) and S/AC.26/Dec.101 (2000)) and subsequent corrections approved by the Governing Council in its decisions 42, 44, 51, 54, 57, 71, 79, 85, 95, 99, 109 and 113 (S/AC.26/Dec.42 (1997), S/AC.26/Dec.44 (1997), S/AC.26/Dec.51 (1998), S/AC.26/Dec.54 (1998), S/AC.26/Dec.57 (1998), S/AC.26/Dec.71 (1999), S/AC.26/Dec.79 (1999), S/AC.26/Dec.85 (1999), S/AC.26/Dec.95 (2000), S/AC.26/Dec.99 (2000) S/AC.26/Dec.109 (2000) and S/AC.26/Dec.113 (2000)).

Table 13. Revised total recommended awards for category "C" claims

| Instalment | Previous total recommended award (USD) a/ | Corrected total recommended award (USD) |
|---|---:|---:|
| First | 51,086,478.00 | 51,109,553.00 |
| Second | 431,743,689.19 | 431,744,251.33 |
| Third | 324,883,154.77 | no change |
| Fourth | 654,598,151.73 | no change |
| Fifth | 735,475,730.98 | 735,451,980.54 |
| Sixth | 765,713,687.98 | no change |
| Seventh | 1,932,771,429.79 | 1,932,668,679.87 |

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a/ The previous total recommended award amounts in this column include the initial awards approved by the Governing Council in its decisions 25, 36, 37, 39, 41, 52 and 70 (S/AC.26/Dec.25 (1994), S/AC.26/Dec.36 (1996), S/AC.26/Dec.37 (1996), S/AC.26/Dec.39 (1996), S/AC.26/Dec.41 (1997), S/AC.26/Dec.52 (1998), S/AC.26/Dec.70 (1999)) and subsequent corrections approved by the Governing Council in its decisions 39, 41, 52, 85, 95, 99 and 113 (S/AC.26/Dec.39 (1996), S/AC.26/Dec.41 (1997), S/AC.26/Dec.52 (1998), S/AC.26/Dec.85 (1999), S/AC.26/Dec.95 (2000), S/AC.26/Dec.99 (2000), and S/AC.26/Dec.113 (2000)).